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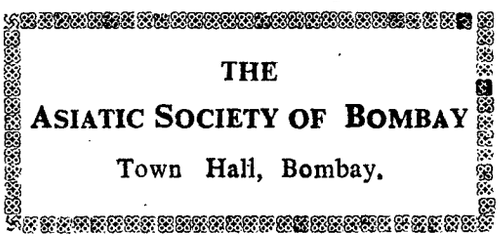

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REPORT

OF

THE ROYAL COMMISSION

ON

DIVORCE AND MATRIMONIAL CAUSES.

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Presented to Parliament by Command of His Majesty.

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WARRANTS.

Whitehall, November 10, 1909.

The KING has been pleased to issue a Commission under His Majesty's Royal Sign Manual, to the following effect:—

EDWARD R. & I.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, to—

Our right trusty and well-beloved Counsellor John Gorell, Baron Gorell, late President of the Probate, Divorce, and Admiralty Division of Our High Court of Justice;

The Most Reverend Father in God Our right trusty and right entirely beloved Counsellor Cosmo Gordon, Archbishop of York, Primate of England and Metropolitan;

Our right trusty and right well-beloved Cousin and Counsellor Edward George Villiers, Earl of Derby, Knight Grand Cross of Our Royal Victorian Order, Companion of Our Most Honourable Order of the Bath;

Our trusty and well-beloved Lady Frances Balfour;

Our right trusty and well-beloved Counsellor Thomas Burt; and

Our trusty and well-beloved—

Charles John Guthrie, Esquire (commonly called the Honourable Lord Guthrie), one of the Senators of our College of Justice in Scotland;

Sir William Reynell Anson, Baronet;

Sir Lewis Tonna Dibdin, Knight, Judge of the Arches Court of Canterbury and of the Chancery Court of York;

Sir George White, Knight;

Henry Tindal Atkinson, Esquire, one of Our Judges of County Courts in England;

May Edith, wife of Harold John Tennant, Esquire;

Rufus Daniel Isaacs, Esquire, one of Our Counsel learned in the Law;

Edgar Brierley, Esquire, Barrister-at-Law, Stipendiary Magistrate of the City of Manchester; and

John Alfred Spender, Esquire;

Greeting!

WHEREAS We have deemed it expedient that a Commission should forthwith issue to inquire into the present state of the law and the administration thereof in divorce and matrimonial causes and applications for separation orders, especially with regard to the position of the poorer classes in relation thereto, and the subject of the publication of reports of such causes and applications; and to report whether any and what amendments should be made in such law, or the administration thereof or with regard to the publication of such reports:

Now know ye, that We, reposing great trust and confidence in your knowledge and ability, have authorised and appointed, and do by these Presents authorise and appoint you, the said John Gorell, Baron Gorell (Chairman); Cosmo Gordon, Archbishop of York; Edward George Villiers, Earl of Derby; Frances Balfour; Thomas Burt; Charles John Guthrie; Sir William Reynell Anson; Sir Lewis Tonna Dibdin; Sir George White; Henry Tindal Atkinson; May Edith Tennant; Rufus Daniel Isaacs; Edgar Brierley; and John Alfred Spender, to be Our Commissioners for the purposes of the said inquiry; and We do hereby empower you to make an interim report with a view of enabling such steps as you may recommend to be taken for the redress of any hardship from which, in your opinion, the poorer classes may suffer under the existing law and administration.

And for the better effecting the purposes of this Our Commission, We do by these Presents give and grant unto you, or any three or more of you, full power to call before you such persons as you shall judge likely to afford you any information upon the subject of this Our Commission; and also to call for, have access to, and examine all such books, documents, registers, and records as may afford you the fullest

information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever:

And We do by these Presents authorise and empower you, or any three or more of you, to visit and personally inspect such places as you may deem it expedient so to inspect for the more effectual carrying out of the purposes aforesaid:

And We do by these Presents will and ordain that this Our Commission shall continue in full force and virtue, and that you, Our said Commissioners, or any three or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment:

And We do further ordain that you, or any three or more of you, have liberty to report your proceedings under this Our Commission from time to time if you shall judge it expedient so to do:

And Our further Will and pleasure is that you do, with as little delay as possible, report to Us, under your hands and seals, or under the hands and seals of any three or more of you, your opinion upon the matters herein submitted for your consideration.

Given at Our Court at Sandringham, the eighth day of November, one thousand nine hundred and nine, in the ninth year of Our Reign.

By His Majesty's Command,
H. J. GLADSTONE.

Whitehall, May 30, 1910.

The KING has been pleased to issue a Warrant under His Majesty's Royal Sign Manual to the following effect:—

GEORGE R.I.

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, to all to whom these Presents shall come,

Greeting!

WHEREAS it pleased His late Majesty from time to time to issue Royal Commissions of Enquiry for various purposes therein specified:

And whereas, in the case of certain of these Commissions, namely, those known as—

The Historical Manuscripts Commission,
The Horse Breeding Commission,
The Sewage Disposal Commission,
The Poor Laws Commission,
The Tuberculosis Commission,
The Canal Communication Commission,
The Mines Commission,
The Welsh Church Commission,
The Coast Erosion and Afforestation Commission,
The Vivisection Commission,
The Land Transfer Acts Commission,
The Ancient Monuments (Wales and Monmouthshire) Commission,
The Ancient Monuments (England) Commission,
The Trade Relations between Canada and the West Indies Commission,
The Selection of Justices of the Peace Commission,
The Divorce and Matrimonial Causes Commission,
The University Education in London Commission, and
The Brussels, Rome, and Turin Exhibitions Commission,

the Commissioners appointed by His late Majesty, or such of them as were then acting as Commissioners, were at the late Demise of the Crown still engaged upon the business entrusted to them:

And whereas We deem it expedient that the said Commissioners should continue their labours in connection with the said inquiries notwithstanding the late Demise of the Crown:

Now know ye that We, reposing great trust and confidence in the zeal, discretion, and ability of the present members of each of the said Commissions, do by these Presents authorise them to continue their labours, and do hereby in every essential particular ratify and confirm the terms of the said several Commissions.

And We do further ordain that the said Commissioners do report to Us under their hands and seals, or under the hands and seals of such of their number as may be specified in the said Commissions respectively, their opinion upon the matters presented for their consideration; and that any proceedings which they or any of them may have taken under and in pursuance of the said Commissions since the late Demise of the Crown and before the issue of these Presents shall be deemed and adjudged to have been taken under and in virtue of this Our Commission.

Given at Our Court at Saint James's, the twenty-sixth day of May, one thousand nine hundred and ten, in the first year of Our Reign.

By His Majesty's Command,
R. B. HALDANE.

GEORGE R.I.

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, To Our Trusty and Well-beloved Sir Frederick Treves, Baronet, Knight Grand Cross of Our Royal Victorian Order, Companion of Our Most Honourable Order of the Bath, whom We have appointed to be one of Our Sergeant-Surgeons,

Greeting!

WHEREAS by the resignation of Our Trusty and Well-beloved Sir Rufus Daniel Isaacs, Knight, now Our Solicitor-General, a vacancy has been caused in the body of Commissioners appointed by Warrant under the Royal Sign Manual bearing date the eighth day of November One thousand nine hundred and nine to inquire into the present state of the law and the administration thereof in divorce and matrimonial causes and applications for separation orders, especially with regard to the position of the poorer classes in relation thereto, and the subject of the publication of reports of such causes and applications; and to report whether any and what amendments should be made in such law, or the administration thereof, or with regard to the publication of such reports:

NOW KNOW YE that We, reposing great confidence in you, do by these Presents appoint you, the said Sir Frederick Treves, to be one of Our Commissioners for the purposes aforesaid in the room of the said Sir Rufus Isaacs, resigned.

Given at Our Court at Saint James's, the twenty-first day of June, 1910, in the first year of Our Reign.

By His Majesty's Command,
W. S. CHURCHILL.

Sir Frederick Treves, Baronet, G.C.V.O., C.B.,
To be a Member of the Royal Commission on
Divorce and Matrimonial Causes.

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REPORT OF THE COMMISSIONERS.

To the King's most Excellent Majesty.

May it please Your Majesty,

We the undersigned Commissioners appointed to inquire into the present state of the law of England and the administration thereof in divorce and matrimonial causes and applications for separation orders, especially with regard to the position of the poorer classes in relation thereto, and the subject of the publication of reports of such causes and applications; and to report whether any and what amendments should be made in such law, or the administration thereof or with regard to the publication of such reports, have inquired into the said subjects, and now humbly submit to Your Majesty's consideration the following Report.

PART I.

Introductory.

1. The original Commission was issued by His late Most Gracious Majesty King Edward VII. on 8th November 1909, and after his death, was ratified and confirmed by Your Majesty by warrant dated the 26th May 1910.

To the regret of Your Commissioners, Sir Rufus Daniel Isaacs, who had become Solicitor-General since the date of the original Commission, was at an early stage, viz., in May 1910, compelled, owing to the pressure of his official duties, to resign his appointment as Commissioner, and Your Majesty was pleased to accept his resignation, and in his place, on the 21st of June, 1910, to appoint Sir Frederick Treves, Baronet, G.C.V.O., C.B., to be a member of the Commission.

In March 1911, the Earl of Derby found it necessary, owing to the fact that pressure of business prevented him from giving the attendance that was necessary, especially during the consideration of the report, to resign his office of Commissioner, and Your Majesty was pleased to accept his resignation. Your Commissioners desire to place on record their sincere regret that they have not had the advantage of the assistance of the Earl of Derby in framing this Report.

Sir George White, one of the Commissioners appointed by His Majesty King Edward VII., took an active part in the work of the Commission, and rendered valuable service during the hearing of the evidence, and in the preparation and consideration of this Report. By his death, on the 11th of May 1912, the Commissioners were deprived of the benefit of his wise counsel, his knowledge of affairs, and his great interest in the working people of England, in finally adjusting its terms. But the votes given by him on a series of Resolutions dealing with all the questions involved enable us to say that, subject to what is mentioned in the note on page 99, it expresses in substance the views which he held on these subjects.

Procedure.

2. Your Commissioners were empowered to make an interim report with the view of enabling steps to be taken for the redress of any hardships from which, in their opinion, the poorer classes may suffer under the existing law and administration. This power was, we apprehend, to enable us, at the earliest possible moment, to report upon one of the most pressing and important of the questions referred to us for inquiry and report. That question was raised by a motion made on the 14th of July, 1909, in the House of Lords, by the Chairman of the Commission: "That it is expedient "that jurisdiction to a limited extent in divorce and matrimonial cases should be "conferred upon county courts, in order that the poorer classes may have their cases

Note.—The references given by volume and page and by number are to the volumes and pages of the Minutes of Evidence and to the numbers of the questions. The references to matters in the Appendices are given by the number of the particular Appendix and the page of the volume of Appendices.

" of that nature heard and determined in such courts." The motion did not propose to deal with any alteration in the law of divorce, but it was suggested by the mover that the points raised might touch upon larger matters which required consideration, and that if at the end of the discussion it were thought that there should be further inquiry, either by a committee or by a Royal Commission, into the whole subject of the law of divorce and its administration, the matter might be dealt with in that way without pressing the motion to a decision. The suggestion of a full inquiry appearing to meet with approval, upon an intimation from the Lord Chancellor that His Majesty's Government might take a favourable view of the suggestion, the motion was, by leave, withdrawn.

His late Most Gracious Majesty was afterwards pleased to appoint the Commission as above stated.

3. In the inquiry which we have held, we have found that the evidence relating to the questions which we have had to consider, could not, with convenience, be separated, so as to enable us to make an Interim Report upon the question more particularly raised by the aforesaid motion, and upon which we are expressly empowered to make an interim report, or upon any other point. We, therefore, on the 30th of June, 1910, caused a letter to be addressed by our Secretary to Your Majesty's Secretary of State for Home Affairs informing him that "the Commissioners have come to the conclusion " that, having regard to the complicated nature of the questions which require their " consideration, and the close connection which each of these questions has with " the rest of them, it will be impracticable for them to present an Interim Report of " their proceedings, and that they consider that it would be inexpedient to endeavour " to present a report before they have come to the close of their proceedings."

We now make this report upon all the matters submitted to us for inquiry, proposing to bear in mind the distinction between alterations and improvements in the administration of the law, and amendments of the law, which we suggest should be made. We use the term " divorce " in this Report for divorce *a vinculo*, meaning dissolution of the marriage tie, with liberty to remarry.

4. We have felt from the commencement of our duties the very great gravity of the inquiry. It has involved the consideration of the present state of the law relating to divorce and matrimonial causes, the origin of the present law, the principles on which the law should rest, the administration of the laws, both as to courts and methods, especially in relation to the poorer classes, the advantages and disadvantages of publication of reports of divorce and other matrimonial cases, and generally the regard in which the marriage tie is held, the interests of married persons and their children, the morality of the people, the relationship of the sexes, and the interests of society and the State in these matters and kindred subjects. We have felt that the gravity of the inquiry was enhanced by the fact that some of the questions raised do not touch merely upon human laws and institutions, but are affected by religious beliefs and opinions, and are regarded by many as incapable of solution on mere grounds of public policy, because they are, in their opinion, concerned with man's spiritual welfare as well as with his social conditions.

A full inquiry, such as has taken place before us, does not appear to have been held at any time previously in this country, nor, so far as we are aware, in any other; and although the terms of the Commission only relate, as we interpret them, to the law of England and Wales and its administration therein, it seemed certain that such an inquiry and any recommendations following upon it could not be without influence in other parts of the British Empire and in other countries.

5. We determined to take the evidence in public, except any particular part the character of which made it undesirable that it should be so taken. In coming to this resolution, we had in view the importance of bringing the proceedings to the attention of those whose knowledge might prove useful, and who might thus be led to communicate with us. The result has been the receipt by us of many important communications, which we might not otherwise have received. We also felt it essential to obtain evidence of the most representative character. For this purpose we communicated with all the associations, institutions, churches, bodies, officials and others, whom we thought likely to be of assistance; and we were able through the courtesy of the press to give public notice of our desire to accept evidence from bodies and persons, with whom we had not specially communicated. The result has been the collection of the evidence and materials accompanying the report.

6. We have held 71 sittings, at 56 of which evidence was taken, and we have examined 246 witnesses. We wish to record our recognition of the assistance, which we have derived from the evidence of many of the witnesses, who had obviously taken immense trouble in the preparation of their proofs, and in the collection of materials to place before us. We have also received many communications and have been supplied with much information, which, so far as is material, will be found in the Appendices. The special experience of the witnesses in connection with the questions under consideration, or some of them, may be gathered from the following summary of those who have given evidence.

SUMMARY OF WITNESSES GROUPED.

Judges of the High Court of Justice :
The Right Hon. Lord Alverstone. (Vol. II., p. 119.)
The Right Hon. Sir John Bigham (Lord Mersey). (Vol. I., pp. 38, 65.)
Mr. Justice Bargrave Deane. (Vol. I., p. 49.)

King's Proctor :
The Right Hon. the Earl of Desart (formerly King's Proctor). (Vol. II., p. 135.)

Master of the Supreme Court :
Sir John Macdonell, C.B. (Vol. I., p. 16.)

Registrar of the Probate, Divorce, and Admiralty Division of the High Court of Justice :
A. Musgrave. (Vol. I., p. 10.)

County Court Judges :
His Honour Judge Austin. (Vol. II., p. 18.)
" " " Granger. (Vol. II., p. 24.)
" " " The Hon. W. B. Lindley. (Vol. II., p. 56.)
" " " O'Connor, K.C. (Vol. II., p. 5.)
" " " Ruegg, K.C. (Vol. II., p. 88.)
" " " Sir W. Lucius Selfe. (Vol. I., p. 105.)
" " " Steavenson. (Vol. I., p. 101.)
" " " Woodfall. (Vol. II., p. 40.)

County Court Registrars :
T. L. Chadwick - Dewsbury. (Vol. II., p. 60.)
F. W. Dendy - - Newcastle-upon-Tyne. (Vol. I., p. 133.)
H. Gough - - Edmonton. (Vol. I., p. 139.)
W. Gregson - - Southend. (Vol. I., p. 137.)
C. H. Pickstone - Bury. (Vol. I., p. 115.)
W. H. Whitelock - Birmingham. (Vol. II., p. 35.)

High Bailiff :
C. J. R. Tijou - - Bow. (Vol. I., p. 111.)

Metropolitan Police Magistrates :
Cecil Chapman. (Vol. II., p. 47.)
E. W. Garratt. (Vol. II., p. 30.)
R. H. B. Marsham. (Vol. I., p. 85.)
A. C. Plowden. (Vol. II., p. 271.)
John Rose. (Vol. I., p. 89.)

Stipendiary Magistrates :
C. M. Atkinson - Leeds. (Vol. I., p. 287.)
B. C. Brough - - Stafford. (Vol. I., p. 317.)
L. Morton Browne - Birmingham. (Vol. I., p. 302.)
T. W. Fry - - Middlesbrough. (Vol. I., p. 312.)
W. J. Grubbe - - East Ham. (Vol. II., p. 1.)
J. G. Hay Halkett - Hull. (Vol. I., p. 296.)
N. C. A. Neville - Wolverhampton. (Vol. I., 296.)
J. Smith - - - Grimsby. (Vol. I., p. 307.)

Clerks to Justices :
W. Barradale - - Birmingham. (Vol. I., p. 361.)
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Mr. Justice Denniston	New Zealand. (Vol. II., p. 146.)
Professor J. D. Lawson	United States of America. (Vol. II., p. 468.)
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Sir R. Solomon	Union of South Africa. (Vol. II., p. 151.)

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The Lord Bishop of Birmingham. (Vol. II., p. 347.)
The Lord Bishop of Ely. (Vol. II., p. 431.)
Rev. W. Falkner Baily. (Vol. II., p. 326.)
Rev. H. Gresford Jones. (Vol. II., p. 334.)
Rev. Canon H. Lewis. (Vol. III., p. 337.)
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Rev. J. E. Watts-Ditchfield. (Vol. II., p. 310.)
Rev. H. Williams. (Vol. III., p. 335.)

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C. N. Johnston, K.C. (Vol. III., p. 345.)
The Right Rev. P. M'Adam Muir. (Vol. III., p. 339.)

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D. L. Alexander, K.C.	President of the London Committee of Deputies of the British Jews. (Vol. III., p. 412.)
R. L. Blackburn, K.C.	The Episcopal Church of Scotland. (Vol. III., p. 320.)
Frederic Harrison -	The Positivists. (Vol. III., p. 355.)
H. S. Q. Henriques -	Vice-president of the London Committee of Deputies of the British Jews. (Vol. III., p. 415.)
H. W. Hill - -	The English Church Union. (Vol. III., pp. 363, 373.)
Rev. J. D. Jones -	The Congregational Union. (Vol. III., p. 434.)
Father Michael Kelly	Roman Catholic Church. (Vol. III., p. 328.)
Rev. J. Scott Lidgett	The Wesleyan Methodists. (Vol. III., p. 332.)
The Right Rev. Monseigneur Moyes -	Roman Catholic Church. (Vol. II., p. 426.)
Rev. E. Gordon Savile	The Church of England Men's Society. (Vol. III., p. 324.)
Isaac Sharp - -	The Society of Friends. (Vol. III., p. 361.)
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Rev. E. G. Wood -	The English Church Union. (Vol. III., p. 367.)

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Professor Cooper -	Glasgow. (Vol. III., p. 301.)
Professor Denney -	Glasgow. (Vol. III., p. 262.)
Rev. C. W. Emmet -	Steventon. (Vol. III., p. 297.)
Canon Hensley Henson - - -	London. (Vol. II., p. 404.)
Dr. Inge - - -	Cambridge. (Vol. III., p. 252.)
Professor W. P. Paterson - -	Edinburgh. (Vol. II., p. 441.)
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Dr. Sanday - -	Oxford. (Vol. III., p. 237.)
Dr. Swete - -	Cambridge. (Vol. III., p. 316.)
Professor Whitney -	London. (Vol. III., p. 274.)

The Press:

Russell Allen - -	"Manchester Evening News." (Vol. III., p. 188.)
C. Moberly Bell -	"The Times." (Vol. III., p. 198.)
D. Edwards - -	"Nottingham Daily Express." (Vol. III., p. 521.)
H. A. Gwynne - -	"The Standard." (Vol. III., p. 205.)
H. Hodge - -	"The Saturday Review." (Vol. III., p. 210.)
A. G. Jeans - -	"Liverpool Daily Post." (Vol. III., p. 181.)
Sydney Low - -	"St. James' Gazette" (formerly). (Vol. III., p. 510.)
J. S. R. Phillips -	"Yorkshire Post." (Vol. III., p. 214.)
C. P. Scott - -	"Manchester Guardian." (Vol. III., p. 518.)
J. T. Smith - -	"National Union of Journalists." (Vol. III., p. 193.)
W. T. Stead - -	"Review of Reviews." (Vol. III., p. 514.)
J. St. Loe Strachey -	"The Spectator." (Vol. III., p. 222.)

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The Lord Chancellor's Visitor in Lunacy:

Sir J. Crichton-Browne - -	London. (Vol. III., p. 59.)

Lunacy Commissioners:

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Sydney Coupland -	London. (Vol. III., p. 68.)
F. Needham - -	London. (Vol. III., p. 76.)

Medical—continued.

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T. B. Hyslop - Of the British Medical Association. London. (Vol. III., p. 20.)
Robert Jones - Of the British Medical Association. Claybury. (Vol. III., p. 11.)
W. D. Moore - Virginia Water. (Vol. III., p. 396.)
Sir G. H. Savage - London. (Vol. III., p. 105.)

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L. Foulkes-Jones - Associated Societies for the Protection of Women and Children. (Vol. II., pp. 396, 402.)
W. Milledge - - Bradford City Guild of Help. (Vol. II., p. 393.)
W. Ramsay Fairfax - Divorce Law Reform Union. (Vol. I., pp. 208, 212.
R. T. Gates - - Divorce Law Reform Union. (Vol. I., pp. 208, 212.
R. P. Clayton - - Liverpool Society for the Prevention of Cruelty to Children. (Vol. III., p. 429.)
Hon. Mrs. Hubbard - The Mothers' Union. (Vol. II., pp. 189, 196, 205.)
Mrs. Church - - The Mothers' Union. (Vol. II., pp. 189, 196, 205.)
Mrs. Steinthal - The Mothers' Union. (Vol. II., pp. 189, 196, 205.)
Rev. A. R. Buckland National Council of Public Morals. (Vol. III., p. 223.)
R. J. Parr - - National Society for the Prevention of Cruelty to Children. (Vol. III., p. 133.)
Miss Broadhurst - Political Reform League. (Vol. III., p. 39.)
Ninian Hill - - Scottish National Society for the Prevention of Cruelty to Children. (Vol. III., p. 145.)

The Right Hon. Sir David Brynmor Jones, K.C., M.P.	Secretary of the Welsh Liberal Parliamentary Party (formerly a County Court Judge). (Vol. III., p. 498.)
Miss M. Llewelyn Davies.	Women's Co-operative Guild. (Vol. III., p. 149.)
Mrs. E. Barton -	" " " (Sheffield Branch). (Vol. III., p. 171.)
Mrs. Homan - -	Women's Industrial Council. (Vol. III., p. 173.)
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Mrs. Hodder - -	Church Army Worker—London. (Vol. III., p. 384.)
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Mrs. Swanwick -	Manchester. (Vol. II., p. 459.)
G. B. C. Yarborough	Chairman of the West Riding Quarter Sessions. (Vol. II., p. 338.)

In addition to these witnesses, a number of societies, associations, and other bodies and individuals were invited to give evidence before us, but for one reason or another did not feel in a position to do so.

7. We have received resolutions passed at meetings of numerous bodies, copies of which will be found in Appendix XXV., pp 162–71.

We have also received a very large number of letters and communications from various persons calling attention to particular points and to individual cases. These documents appeared to us to be bonâ fide in character. They are too numerous to print as a whole in the Appendix, but copies have been made of a sufficient number of them to illustrate fairly the nature of each point with which they deal; these will be found in Appendix XXVI., pp. 172 *et seq.*

We have also had put in evidence by—

(1) Sir John Macdonell.—Historical sketch of the laws relating to divorce. Vol. I., pp. 31–7.

(2) Sir Lewis Dibdin.—Notes on the Reformatio Legum Ecclesiasticarum. Vol. III., pp. 44–58.

(3) The Chairman.—Notes on the principles on which divorce legislation should proceed. Vol. III., pp. 527–48.

(4) The Secretary.—A summary of the laws relating to divorce in other countries and colonies. Vol. I., pp. 4–10.

The Assistant Secretary has at the request of the Commissioners prepared a memorandum on the history of the law of divorce, Appendix I., pp. 3–22, and a memorandum on the names of women after divorce, Appendix XXVIII., p. 191.

There are also to be found in the Appendices, memoranda and notes from some of the witnesses explanatory of their views and adding thereto. Besides these documents, our attention has been drawn by some of the witnesses, and otherwise, to many learned works on the subjects with which we have been concerned.

8. We may here state that, from the outset, it was apparent that certain main questions would require investigation, such as the providing of adequate means for all classes to bring their cases before the courts; the exercise, by courts of summary jurisdiction, of their powers with regard to separation orders; the consideration of the position of women relatively to men; the grounds upon which divorce and judicial separation should be permitted, and the publication of reports of divorce and matrimonial cases. But the evidence has brought to our attention numerous other important questions, which will be dealt with hereafter. In the treatment of these numerous questions, a certain amount of repetition has been found unavoidable.

PART II.

The Present State of the Law.

9. Before considering the historical aspect of the questions involved it may be convenient to state how the law stands at present. The present state of the law of England relating to divorce and matrimonial causes depends upon the Matrimonial Causes Act of 1857 (20 & 21 Vict. c. 85) and the Acts amending the same, hereafter referred to, according to which a husband may obtain a dissolution of his marriage on the ground that his wife has, since the celebration thereof, been guilty of adultery, and a wife may obtain a dissolution of her marriage on the ground that, since the celebration thereof, her husband has been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et thoro*, or of adultery, coupled with desertion, without reasonable excuse, for two years or upwards.

The Act of 1857 constituted a court in London called "The Court for Divorce and Matrimonial Causes," by which the law was to be administered, and transferred to that court the jurisdiction formerly and then vested in the ecclesiastical courts in respect of divorces *a mensâ et thoro*, suits of nullity of marriage, suits for restitution of conjugal rights, or jactitation of marriage, and other matrimonial causes suits and matters, except in respect of marriage licences. This court was, by the Judicature Acts, consolidated with the Supreme Court of Judicature in England; its jurisdiction was transferred to and vested in the High Court of Justice; and divorce and matrimonial causes were assigned to the Probate, Divorce, and Admiralty Division of the said High Court (hereinafter called for brevity the Divorce Division).

10. Thus a new jurisdiction was created, which enabled a court of law to grant decrees dissolving marriages. The same court was to exercise the powers of the old Ecclesiastical Courts; and desertion for two years and upwards was made a new ground for divorce *a mensâ et thoro*, which then became termed judicial separation.

The principal suits over which the former Ecclesiastical Courts exercised jurisdiction before 1857 were:—

(1) Suits for divorce *a mensâ et thoro*. By the decree the parties to a marriage were separated, but the marriage tie was not dissolved. The grounds were (*a*) adultery, (*b*) unnatural offences, (*c*) cruelty, and there was no distinction of sex.

(2) Nullity suits: The object of these was to declare a marriage null (1) as being void, where there was no consent, or the marriage was invalidly contracted, or was within the prohibited degrees, or was bigamous, or (2) as being voidable, as in the case of impotence.

(3) Suits for the restitution of conjugal rights. Since 1884, disobedience to a decree in such a suit involved certain pecuniary consequences, and the party disobeying was treated as guilty of desertion for two years and upwards, and was liable to a suit based on such desertion.

(4) Suits for jactitation of marriage. These were so rare as to call for no statement.

The amending Acts dealt mainly with procedure and practice, and made no change with regard to the grounds upon which divorce could be obtained.

11. By other Acts, courts of summary jurisdiction were given certain powers to separate husbands and wives. These powers have been largely exercised, and many important questions are raised with regard thereto, but as these courts do not deal with divorce, we propose to consider them separately hereafter.

PART III.

Historical.

12. It is unnecessary, in our view, to enter in this Report into any detailed examination of the causes—religious, social, and political—and of the course of events which led up to the passing of the Divorce Act of 1857. For a full discussion of the religious questions involved, we refer to the evidence laid before us, representing all shades of theological opinion. The social and political questions, as these have affected different countries in successive ages, and England in particular, are discussed in the

Notes contained in the Chairman's evidence (Vol. III., p. 527), to which we draw special attention; Sir John Macdonell's historical sketch (Vol. I., p. 31); Sir Lewis Dibdin's Memorandum (Vol. III., p. 42); Mr. Abrahams' account of the Jewish Law and Customs (Vol. III., p. 228); and the historical memorandum prepared by Mr. de Montmorency, the Assistant Secretary of the Commission (App. I., p. 3). We have also been referred to the works of various writers on these subjects, including "A History of Matrimonial Institutions," by Eliot Howard, Ph.D., Lecturer in the University of Chicago, published in 1904.

13. Turning to the historical aspect of the question, we content ourselves with pointing out that in all ages and countries and under all religious systems, serious breach of the obligations involved in matrimony has been always regarded as constituting a legal as well as a moral wrong and as entitling the innocent spouse to a legal remedy. In England the Ecclesiastical Courts at an early date acquired complete jurisdiction over questions of marriage and divorce, there being an ultimate appeal from their decisions to Rome, which was abolished by 24 Henry VIII. c. 12.

The only divorce, which the pre-Reformation Church recognised and its Courts granted, was a divorce *a mensâ et thoro* (equivalent to what is now termed a judicial separation), as the Church held that a valid marriage between Christians was indissoluble. The hardships which result from holding marriage indissoluble were, however, mitigated by a system of effecting complete divorce by means of decrees of nullity, the grounds for which were numerous. Referring to the rules as to the forbidden degrees of consanguinity and affinity, Sir Lewis Dibdin (*ib.*) says: "These "elaborate and highly artificial rules produced a system under which marriages "theoretically indissoluble, if originally valid, could practically be got rid of by "being declared null *ab initio* on account of the impediment of relationship. This "relationship might consist in some remote or fanciful connection, between the "parties or their godparents, unknown to either of them until the desire to find a "way out of an irksome union, suggested minute search into pedigrees for obstacles "—a search which somehow seems to have been generally successful." The grounds still recognised by the Roman Catholic Church for declaring a marriage null are given by Monseigneur Moyes as 15 in number (22,921).

At the Reformation these causes of nullity became no longer recognised by English law as available for nullifying a marriage duly contracted, and the effect of the doctrine of indissolubility was thereby enhanced; but it was then contemplated that there should be a general examination into and reform of ecclesiastical law and procedure. The subject was considered (*see* Sir Lewis Dibdin, *ib.*), but no general reform of the ecclesiastical law relating to divorce or of the courts, which administered it, was effected. Opinion had, however, changed with regard to the theory of the indissolubility of marriage, the Reformers maintaining that marriage was not indissoluble, and as relief by means of decrees of nullity was no longer available as before, resort was had to the Legislature for private Acts of Parliament authorising divorce and remarriage, in the absence of civil tribunals capable of dealing with suits for divorce *a vinculo*.

14. The first Acts dealing with particular marriages passed in the years immediately prior to the English Reformation were those relating to Henry VIII. In 1533-4, by 25 Hen. VIII. c. 22 his marriage with his first wife Katherine was declared void. In 1536, by 28 Hen. VIII. c. 7, s. 1, his marriage with Anne Boleyn was found to be utterly "voyde and of none effecte; by reason whereof your Highnes was and "is lawfully devorced and separated from the bondes of the said mariage in the lyffe "of the said Lady Anne." In 1540, the Statutes 32 Hen. VIII. c. 25 declared the "pretensed mariage with the Lady Anne of Cleves" to be "itselfe nought and of noo force," and the parties were at liberty and pleasure "to contracte matrimony and mary" (s. 1). These were in form declarations of nullity.

The Assistant Secretary in his notes also refers to some early bastardy and legitimation acts.

15. The first Act which can be considered a private divorce Act (unless possibly that of Sir Ralph and Lady Sadler of 1545 referred to in the last-mentioned notes) (37 Hen. VIII., c. 30), related to the Marquess of Northampton. Having obtained a decree of the Ecclesiastical Court separating him from his wife on the ground of her adultery, he married again. A Commission of delegates, headed by the Archbishop of Canterbury, and appointed on the petition of the Marquis, declared the

second marriage valid; and by a Statute of 1551–2, 5 & 6 Ed. VI. [No. 30], the second marriage was declared valid by the law of God, any decretal canon, ecclesiastical law or usage to the contrary notwithstanding, and their children legitimate; but this Act was repealed in 1553 by 1 Mary [Stat. 2, No. 30].

In 1552 legislation was proposed to the effect that "no man shall put away his "wife, and marry again, unless he shall be lawfully divorced before some competent "ecclesiastical judge," but no statute resulted. (*See* the notes last mentioned, App. I., p. 19.)

We do not think it necessary to refer to the few acts and cases mentioned in those notes prior to the latter part of the 17th century.

The Ecclesiastical law as to divorce remained unchanged by statute, but, from facts collected in those notes, it may be gathered that, after the Reformation, people for a time not infrequently regarded themselves as entitled to re-marry, after, or without a divorce *a mensâ et thoro*. (*See* the notes by Sir Lewis Dibdin (Vol. III., p. 56, c. CI.), Latimer's Last Sermon before Edward VI. (Vol. III., p. 296)). The bond required by the 107th Canon of 1603–4 against re-marrying after a decree of divorce *a mensâ et thoro* appears to have been directed against such remarriages.

But whatever confusion there may have been in some men's minds, and whatever irregularities may have taken place in the times immediately following the Reformation, we find subsequently recognition by all of the fact that without a private Act a valid marriage could not be dissolved. The practice of obtaining private Acts in order to dissolve marriages commenced in the latter part of the 17th century.

Box's case in 1701 appears to have been one of the first, if not the first case, where, without any special circumstances, the Legislature granted a divorce *a vinculo* after sentence in the Arches Court.

16. From the end of the 17th century, Acts of Parliament dissolving marriage became frequent. The Commissioners appointed to inquire into the law of divorce in 1850, in the 26th paragraph of their report state as follows :—

> "By these means the right to obtain a divorce *à vinculo* was definitively established. It was established, however, in the rudest and most inconvenient manner; for the proceeding was a judicial one by a legislative process, and it had all the inconveniences which necessarily result from the discussion of such a question in a mixed and popular assembly. At first only a few divorce bills were passed—not more than five were carried through Parliament before the accession of the House of Hanover. From 1715 to 1775 their number was 60, that is to say, they averaged about one a year. From 1775 to 1780 they had increased to 74, that is to say, upon an average, to about three a year: and from 1800 to 1852, they amounted to 110. Two of these, viz., *Lady Macclesfield's* and the *Duke of Norfolk's cases* were without any sentence ecclesiastical: and several were without any previous verdict at law; for no standing orders of either House of Parliament required the institution of these Parliamentary [*sic.* preliminary] proceedings until the year 1798."

17. In 1798 certain orders of the House of Lords regulating the practice with regard to these private Acts of Parliament were passed at the instigation of Lord Chancellor Loughborough, and, after the passing of these orders, applications for divorce *a vinculo* to Parliament were supported by ecclesiastical sentences and verdicts at law in actions of crim. con. or circumstances were alleged, which justified or explained the want of such verdicts. That practice was followed until the Matrimonial Causes Act, 1857, abolished this elaborate and costly method of obtaining the benefit of divorce. But this abolition did not extend to Ireland: the old practice is still in force in that country, and cases of divorce from Ireland are dealt with by an Act of Parliament passed through both Houses. In the course of the proceedings the facts are brought before a committee of learned Lords, who hear the evidence of the parties and report as to the right to a divorce, and the Bill also passes through Committee in the House of Commons.

18. Whatever may have been the opposition to the first few cases in Parliament, the general practice which was established was of a judicial rather than a legislative order, and the cases appear to have been disposed of on their merits. This practice was confined to cases of adultery. No general investigation was made as to the principles upon which divorce should proceed, but the opinion that adultery was a good ground of divorce was adopted and acted on.

19. All the private acts which were passed in pursuance of this practice, except four, were in favour of husbands against wives. The excepted four were by wives against husbands in aggravated circumstances. The grounds of a distinction being made between men and women will be considered later. At present it is sufficient to say that the offence appears to have been considered greater, and its consequences more serious in the case of a woman than in that of a man; forgiveness seems to have been more naturally expected in the former case than in the latter.

PART IV.

The Royal Commission of 1850.

20. It seems extraordinary that an inquiry into the state of the laws and procedure connected with matrimonial causes should have been so long delayed, and that reforms should not have been introduced before the middle of the 19th century. For, according to common law as well as Ecclesiastical law and practice, divorce remained unrecognized; but the Legislature recognized it, in case of a wife's adultery, and, in case of a husband's, when his adultery was accompanied with aggravating circumstances, by giving a remedy, as we have shown, through what was in form a legislative, but in substance a judicial, proceeding, which was open, as a matter of course, on sufficient evidence, to anyone who was rich enough to pay for it. The cost and inconvenience were, however, so great that the remedy was obviously beyond the means of the great bulk of the community. The ironical observations of Mr. Justice Maule in a case of bigamy (*R.* v. *Hall*, 1845) on the subject are well known, and as this judgment made a deep and lasting impression it may be usefully quoted here.

> "Mr. Justice Maule, in passing sentence, said, that it did appear that he had been hardly used. It was hard for him to be so used, and not to be able to have another wife to live with him, when the former had gone off to live in an improper state with another man. But the law was the same for him as it was for a rich man, and was equally open for him, through its aid, to afford relief; but, as the rich man would have done, he also should have pursued the proper means pointed out by law, whereby to obtain redress of his grievances. He should have brought an action against the man who was living in the way stated with his wife, and he should have obtained damages, and then should have gone to the Ecclesiastical Court and obtained a divorce, which would have done what seemed to have been done already, and then he should have gone to the House of Lords, and, proving all his case and the preliminary proceedings, have obtained a full and complete divorce, after which he might, if he liked it, have married again. The prisoner might perhaps object to this that he had not the money to pay the expenses, which would amount to about 500*l.* or 600*l.*—perhaps he had not so many pence—but this did not exempt him from paying the penalty for committing a felony, of which he had been convicted. His Lordship might, perhaps, have visited the crime more lightly if the prisoner had not misrepresented himself as a bachelor to Maria Hadley, and so deceived her. If he had told her the circumstances, and said, 'Now I'll marry you if you like to take the chance,' &c.; but this he had not done, and thus he had induced her to live with him upon terms which she perhaps else would not have done. It was a serious injury to her, which he had no right to inflict because his wife and others had injured him. For this offence he must receive some punishment, and the sentence was, that he be imprisoned and kept to hard labour for four months, which he hoped would operate as a warning how people trifled with matrimony."*

We also refer to the remarks of the Lord Chancellor (Lord Cranworth) on the elaborate procedure then necessary. When moving the second reading of the Bill of 1857, he said: "To the investigation of the question on three different occasions "there was the grave objection, if no other, that such complicated proceedings were "too expensive for the pockets of any but the richest sufferers, and that relief was "put beyond the reach of all but the wealthiest classes." (Hansard, vol. 145, 489.)

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* *Regina* v. *Thomas Hall*, alias *Thomas Rollins* (Midland Circuit, Warwick: Mr. Justice Maule, April 1st, 1845. Reported in "The Times," April 3, 1845). A somewhat different version appears in "Democracy and Liberty," by William E. H. Lecky (1896), Vol. II., pp. 166, 167, and some other variants have been current. (*See* "The Times," January 27, 1857.)

21. At length in 1850 a Royal Commission was appointed, consisting of Lord Campbell, Dr. Lushington, Lord Beaumont, Lord Redesdale, Mr. E. P. Bouverie, the Right. Hon. S. H. Walpole, K.C., and Vice-Chancellor Sir William Page Wood (Lord Hatherley), "to enquire into the present state of the law of divorce in this "country, and more particularly into the mode of obtaining a divorce *a vinculo* "*matrimonii*, in this country."

The report was signed by all the Commissioners except Lord Redesdale, who gave a statement of his reasons for not entirely concurring in the report. The Commissioners reported in 1853, and their report and the evidence on which it was founded have been placed before the present Commission. The Commissioners examined only two witnesses—viz., John Sheppard, Esq., deputy registrar of the Consistory Court of London, and George Bradford Ellicombe, Esq., a parliamentary agent; but they had also the evidence bearing on the question of divorce which was given before a Select Committee of the House of Lords appointed in 1844, to consider Lord Brougham's Bill presented in that year to amend the jurisdiction of the Committee of the Privy Council. The witnesses before that Committee were the Right Hon. Stephen Lushington, LL.D., the judge of the Consistory Court of London since 1828, and judge of the High Court of Admiralty; Sir John Stoddart, the eminent civilian; Lord Brougham, who only gave evidence as to a statement he had received from a lady; Henry Birchfield Swabey, Esq., the registrar of the High Court of Admiralty, who had been a proctor since 1810; the Lord Advocate of Scotland (the Right Hon. Duncan M'Neill, afterwards Lord Colonsay); and J. A. Maconochie, Esq., a member of the Scottish Bar, examiner to the Consistory Court. Certain documents were also put in evidence (*see* p. 71 *et seq.* of that report).

22. The inquiry, although it led to the Act of 1857, which was founded on the report, was not of an exhaustive character on the whole question of divorce and separation. Indeed, the country was then not prepared for such an inquiry, and that which was made was mainly directed to the substitution of a proper legal tribunal for the procedure by private Acts of Parliament, in cases where it was sought to effect a complete dissolution of marriage. Lord Campbell, who was Chairman of the Commission of 1850, stated in the House of Lords that the object of the Commissioners was not to alter the law but the procedure by which the law was carried into effect. (Hansard, 3rd series, vol. 145, 512.)

23. Influenced, no doubt, by views entertained at that day derived from Scripture as then understood, and the opinions of the authors mentioned by them in the 35th to 40th paragraphs of their report, the Commissioners recommended few material changes, except such as arose from the change of tribunal. They expressed their opinion that grounds of divorce *a mensâ et thoro* should be adultery and cruelty (which had always been recognised as such by the ecclesiastical courts), and wilful and obstinate desertion, which they considered "so entirely frustrates all the objects "of the marriage union, that it may reasonably be doubted whether it should not "be put on the same footing as cases of cruelty." But, because the evils arising from adultery could not "necessarily be predicated as the certain results of the "other causes; for in them at least there is always a possibility of future recon-"ciliation," they were of opinion that divorce *a vinculo* should not be extended beyond cases of adultery (paragraphs 38, 39). Following the practice of the House of Lords, they considered that the wife's position was different from that of the husband, and thus "in cases of incest, bigamy, or the like, it might be proper to give "the wife the power to institute a suit for a Divorce *a vinculo matrimonii*, but as "a general rule, and in all other cases of aggravated enormity, which may possibly "arise, but cannot be defined, we think that the remedy should be left for the "Legislature, and for that alone." They then proceeded to deal with the grounds of defence which should operate as a bar in a suit for divorce, with the terms upon which divorces should be granted, and the legal consequences with which they should be attended, and then they considered the court or courts, and mode of procedure which should be established. They were "of opinion, that in this, as in every case "which has to be submitted to judicial investigation, one tribunal (subject to an "appeal in the event of a miscarriage) is or ought to be sufficient of itself for "administering to the suitors complete justice without having recourse to extraneous "aid"; and they recommended the constitution of a new tribunal for applications for divorce *a vinculo matrimonii* and all causes matrimonial, with an appeal to the House of Lords, and indicated the nature of the procedure which should be adopted.

PART V.

The Act of 1857.

24. The Matrimonial Causes Act of 1857 was passed after much debate in both Houses of Parliament. In introducing the Bill in the House of Lords, Lord Chancellor Cranworth stated that "nothing would induce him to submit a Bill which he "believed would have the slightest tendency to shake the confidence of the country "in the permanency, if not the absolute indissolubility, of the marriage tie. He "believed that the fact of that tie being absolutely binding through life, except "in very extreme cases, was the foundation of some of the best interests of society." After giving a short account of the history of the law, the changes of opinion brought about at the time of the Reformation, and the methods of divorce by private Acts of Parliament, he stated that the law should be made to conform to practice, *i.e.*, as in Parliament, and that "the main object of this Bill was to constitute a court which "should be competent to decree as a matter of right that relief in favour of persons "who had just matter of complaint, which could now only be obtained by means of "an Act of Parliament." He then referred to the parliamentary procedure, to some minor points, to the addition of some other causes, to the special circumstances under which a wife might obtain a divorce against an adulterous husband, more especially desertion, to the wife's position as regards property, and to the maintenance and extension of divorce *a mensâ et thoro*. He concluded thus: "Its object" [*i.e.*, of the Bill] "was to do away with the remedy of private legislation for such persons only "as could afford to obtain a divorce by Act of Parliament, and in cases which were "now relieved by the Ecclesiastical Courts, to give relief by a court especially "constituted for that purpose; and, under cases of lesser evil, to confer upon the "wife all those privileges which she was under the circumstances fully entitled to "obtain." (Hansard, 3rd series, vol. 145, 483–94.)

25. In the House of Commons the point was again made that the Bill was mainly to amend procedure and not to alter the law. The Attorney-General, Sir Richard Bethel, on the order for second reading, said: "The Bill involved only long existing "rules and long established principles, and it was intended to give only a local "judicial habitation to doctrines that had been long recognised as part of the law "of the land, and for a century and a half administered in a judicial manner, "although through the medium of a legislative assembly. Its object was to remove "the inconveniences of that practice, but in all other respects the law of England "upon the subject of divorce would remain what it was now." (Hansard, 3rd series, vol. 147, 718–9.)

26. Efforts were made by Lord Lyndhurst and others to amend the Bill by making the position of a woman the same as that of a man with regard to the grounds of divorce, and for making wilful desertion a ground of divorce; but besides the objections made by those members who opposed the Bill in both Houses, objection was made by the Government that to do so would be going beyond the main object of the Bill. For instance, the Attorney-General, in speaking on an amendment which was proposed in Committee to give a wife, as a ground of divorce, "adultery committed in the conjugal residence," said:—

> "The duty which we have now, however, to discharge is a limited one. It is merely to embody the law of divorce which at present exists, and I know of no private Bill ever having been granted which has embodied the principle which I am now blamed for refusing to discuss. If this Bill were once thrown aside, and the whole law of marriage and divorce made the subject of inquiry, then I should be the last man to limit the field of discussion, or to refuse to consider a state of law which inflicts injustice upon the woman most wrongfully and without cause, and which may be considered opprobrious and wicked. We are now, however, limited to the performance of that duty which this Bill imposes upon us—namely, to erect a new tribunal and to embody the principles of law which already exist. . . . this present Bill need not be the end-all of legislation upon the subject. By this Bill we shall create a tribunal which may hereafter have to administer other laws made under happier auspices."

This amendment was, however, accepted by the Committee, but struck out in the House of Lords. In the House of Commons, Mr. Drummond made an unsuccessful attempt to introduce cruelty alone as a ground of divorce. (Hansard, vol. 147, 1587.)

27. Considerable discussion took place as to giving local jurisdiction in matrimonial cases. At that time the circumstances were different from what they are now; for instance, the county courts, which were created in 1846 for the recovery of small debts, had not attained the position which they now occupy, and although it was pointed out that expense and inconvenience would probably prevent the court in London from being accessible to the poorer classes, no local jurisdiction was given, except to the assize judges in cases of judicial separation and restitution of conjugal rights (*see* section 17 of the Act of 1857; this jurisdiction was taken away by an amending Act of 1858, probably because it was not found workable). We may here notice that the Consistory Courts held at the different diocesan centres could, before 1857, exercise the ecclesiastical jurisdiction at those centres; and at some of those courts, viz., York, Chester, Gloucester, Norwich and Durham, a certain number of cases were heard in addition to those disposed of in London. But the new legislation put an end to all local jurisdiction, and none has since been established, except under the Acts relating to courts of summary jurisdiction (*see* Hansard, vol. 147, 379).

28. The Bill ultimately became the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), and reference must now be made to those provisions of the Statute which are most material to the principal points in this inquiry. By section 2, all jurisdiction then exerciseable by any Ecclesiastical Court in England in respect of divorces *a mensâ et thoro*, suits of nullity of marriage, suits of jactitation of marriage, suits for restitution of conjugal rights, and in all causes, suits, and matters matrimonial, was to cease, except so far as relates to the granting of marriage licences; and (section 6) such jurisdiction, together with the jurisdiction conferred by the Act, was to be exercised by a new court to be called "the Court for Divorce and Matrimonial Causes." Instead of a decree of divorce *a mensâ et thoro*, a decree of judicial separation was to be pronounced (section 7). After provisions for the judges by whom the cases were to be heard (afterwards amended by subsequent Acts so as to leave the jurisdiction of the court to be exercised by a single judge), it was provided, by the 12th section, that the court should hold its sittings at such place or places in London or Middlesex or *elsewhere*, as Her Majesty in Council should from time to time appoint.

The provision as to the court sitting *elsewhere* has never been put in force, and, indeed, if one judge were to administer the jurisdiction conferred it would be impossible for him to do so at any other place than in London, having regard to the amount of business.

Section 16 added to the causes for which a judicial separation might be obtained, either by the husband or the wife (that is to say, adultery or cruelty), desertion without cause for two years and upwards.

According to section 22, the court, in all proceedings other than those to dissolve a marriage, was to proceed and act and give relief on the principles and rules of the Ecclesiastical Courts, but subject as therein mentioned.

Section 27 provided that a husband might present a petition to the court, praying that his marriage might be dissolved on the ground that his wife had, since the celebration thereof, been guilty of adultery; and that a wife might present a petition to the court, praying that her marriage might be dissolved on the ground that, since the celebration thereof, her husband had been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et thoro*, or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

With regard to defences beyond a denial of the facts, it was provided, in section 30, that the court should dismiss the petition, if it should find that the petitioner had during the marriage, been accessory to, or conniving at the adultery of the other party to the marriage, or had condoned the adultery complained of, or that the petition was presented or prosecuted in collusion with either of the respondents; and, in section 31, that, in case the court should be satisfied on the evidence that the case of the petitioner had been proved and should not find that the petitioner had been guilty of any of the matters last mentioned, the court should pronounce a decree declaring the marriage to be dissolved: "Provided always, that the court shall not "be bound to pronounce such decree if it shall find that the petitioner has during "the marriage been guilty of adultery, or if the petitioner shall, in the opinion of the "court, have been guilty of unreasonable delay in presenting or prosecuting such "petition, or of cruelty towards the other party to the marriage, or of having deserted

" or wilfully separated himself or herself from the other party before the adultery " complained of, and without reasonable excuse, or of such wilful neglect or " misconduct as has conduced to the adultery."

By sections 33 and 34, provisions were made for a husband claiming damages from an adulterous co-respondent, and obtaining costs from him.

By section 40, the court was given power to direct issues to be tried in any court of common law, and either before a judge of assize in any county, or at the sittings for the trial of causes in London or Middlesex, and either before a special or common jury. (But this procedure seems to have fallen into complete disuse, probably because it could not be conveniently worked, and more especially because of the disadvantage of trying issues before one judge, who was not one of the regular judges of the court, and concluding the cases before another.)

According to section 57, after a decree dissolving a marriage had become final, it was declared lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death; provided that no clergyman in Holy Orders of the United Church of England and Ireland should be compelled to solemnize the marriage of any person whose former marriage might have been dissolved on the ground of his or her adultery, or should be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person. But, according to section 58, when any minister of any church or chapel of the United Church of England and Ireland should refuse to perform such marriage service between any persons who, but for such refusal, would be entitled to have the same service performed in such church or chapel, such minister was to permit any other minister in Holy Orders of the said United Church, entitled to officiate within the diocese in which such church or chapel was situate, to perform such marriage service in such church or chapel.

The Amending Acts.

29. Several amending Acts have been passed, which contain numerous provisions as to the procedure, practice, and powers of the court, to some of which we may find it necessary to refer in dealing with the details of suggested amendments. For the present, it is sufficient to notice certain provisions in the Acts of 1860, 1866, 1868, 1873, and 1884.

By the Matrimonial Causes Act, 1860 (23 & 24 Vict. c. 144, s. 7), decrees for divorce were not to be made absolute until after the expiration of not less than three months, and powers were given to any person during such period to intervene to show cause why the decree should not be made absolute, by reason of the same having been obtained by collusion, or by reason of material facts not brought before the court, and, on cause being shown, the court was given power to deal with the case by making the decree absolute, or by reversing the decree nisi, or by requiring further inquiry or otherwise, as justice might require, and special powers of intervention were conferred upon the King's Proctor in case, from information supplied as mentioned in the Statute or otherwise, he should suspect that the parties to the suit were, or had been, acting in collusion, for the purpose of obtaining a divorce contrary to the justice of the case. It may be here noticed that interventions, except by the King's Proctor, are extremely rare and may practically be left out of consideration; but intervention by the King's Proctor and the consequent recision of a decree nisi is not infrequent: this matter will be dealt with subsequently.

By the Matrimonial Causes Act, 1866 (29 Vict. c. 32, s. 3), a decree nisi for a divorce was not to be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the court should, under the power then vested in it, fix a shorter time.

It is not necessary to refer to all the sections of the Acts which deal with appeals, but it may be useful to notice that by section 4 of the Matrimonial Causes Act, 1868 (31 & 32 Vict. c. 77), in cases where, under this Act, there shall be no right of appeal, the parties respectively are to be at liberty to marry again at any time after the pronouncing of the decree absolute.

By the Matrimonial Causes Act, 1873 (36 & 37 Vict. c. 31), the provisions aforesaid as to interventions were extended to suits for nullity of marriage.

The Matrimonial Causes Act of 1884 (47 & 48 Vict. c. 68), abolished the power of enforcing a decree for restitution of conjugal rights by attachment, but gave the court power to order, where the application was by the wife, such periodical payments to be made by her husband as might be just, and power to order the husband to secure such periodical payments; and where the application was by the husband, the court

was given power to order a settlement to be made of any property of the wife's for the benefit of the petitioner and the children of the marriage, or either or any of them, and to order such part as the court might think reasonable of any profits of trade or earnings, of which the wife was in receipt, to be periodically paid by her to the husband for his own benefit, or to him or any other person for the benefit of the children of the marriage, or either or any of them (sections 2, 3, and 4).

According to section 5, a respondent failing to comply with a decree of the court for restitution of conjugal rights was to be deemed guilty of desertion without reasonable cause, and a suit for judicial separation might be forthwith instituted, and a sentence of judicial separation might be pronounced, although the period of two years might not have elapsed since the failure to comply with the decree for restitution of conjugal rights. If the husband had been guilty of desertion, by failure to comply with such a decree, and of adultery, his wife might forthwith present a petition for dissolution of her marriage, and the court might pronounce a decree nisi for the dissolution thereof on the ground of adultery coupled with desertion, which decree should not be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the court should fix a shorter time.

30. Since the amalgamation of the courts under the Judicature Acts, the jurisdiction of the court for Divorce and Matrimonial Causes has been transferred to, and is exercised by, the High Court of Justice in the Probate, Divorce, and Admiralty Division, which consists of the president and one puisne judge.

31. It will be more convenient to refer to the Statutes, which confer powers upon the magistrates to deal with cases of separation between husband and wife in certain events, in a later part of the Report, when we come to consider more particularly that branch of our inquiry. It is sufficient here to notice that the Acts to which reference must be made are 58 & 59 Vict., c. 39 (the Summary Jurisdiction (Married Women) Act, 1895), and 2 Edw. VII., c. 28, s. 5 (the Licensing Act, 1902).

PART VI.

Laws of other Countries.

32. Having thus stated the position in England of the law and the courts which administer it, we consider it desirable, before proceeding to consider what alterations in this position should be made, to give a brief summary of the laws in force in other parts of the British Empire, in the principal European countries, and in the United States of America. We have had the provisions of these laws placed before us in the Parliamentary returns containing reports on the laws of marriage and divorce in foreign countries, No. 2, 1894 (C. 7392), No. 2, 1903 (Cd. 1468); and similar returns containing reports on the laws of marriage and divorce in the British self-governing Colonies, 1894 (H.C. 144, 145), (H.C. 323, 324), 1903 (Cd. 1785), and in the United States of America in a work produced in the United States and entitled "Special Reports of the Census Office on Marriage and Divorce," published in 1908 and 1909. In some instances we have had the advantage of hearing the evidence of persons experienced in the laws of the country to which they belong or with which they are familiar, notably, Lord Salvesen (one of the senators of the College of Justice in Scotland), The Right Hon. Ameer Ali (a member of the Judicial Committee of the Privy Council), Sir Richard Solomon (the High Commissioner for the Union of South Africa), the Hon. Mr. Justice Denniston (a judge of the Supreme Court of New Zealand), Professor the Hon. John Davidson Lawson (Dean of the Law School of the State of Missouri), Mr. Newton Crane and Mr. J. Arthur Barratt (members both of the Bar of the Supreme Court of the United States and of the English Bar), Dr. Neuhaus (formerly a German judge), Monsieur Mesnil (a French advocate), Dr. Bisschop (doctor of laws of the University of Leyden and a member of the Amsterdam Bar), Mr. A. W. Samuels, K.C., and Mr. James Roberts (from Ireland), and Mr. J. B. Lorimer, W.S. (from Scotland).

In the documents mentioned the laws are summarised, though some are more fully set out. The different summaries do not appear to be in complete accord. But we have not thought it necessary that the great expense of procuring full copies of the various enactments and of the attendance of witnesses to speak to them should be incurred. For the purposes of this report it seemed to us sufficient to present a summary from the materials before us which, while presented in a concise form, would convey, with sufficient (though perhaps not absolute) accuracy, a general view of the provisions of laws, other than those of England.

British Dominions.

Scotland.

In Scotland, after the Reformation, adultery was introduced as a cause for divorce without Statute, apparently upon scriptural grounds, and as a consequence of the abolition of the Pope's jurisdiction in Scotland. Prior to the Reformation, marriage had been looked upon in Scotland, as in other Roman Catholic countries, as a sacrament; after the Reformation, it came to be regarded from the point of view of a contract, of a peculiarly solemn and far-reaching nature, but which might be dissolved consistently with public morality, and divorce for adultery was at once introduced.

Wilful desertion was confirmed by Statute in the year 1573 as a ground of divorce, four years being then fixed as the period for which the desertion must subsist, and that period has been maintained until the present day. From the evidence of Lord Salvesen (Vol. I., p. 254) it appears that in 1908, 110 decrees for divorce were granted for adultery, of which 59 were at the instance of the husband, and 51 at the instance of the wife; and that, in the same year, 81 decrees for divorce were granted for desertion, of which 20 were at the instance of the husband, and 61 at the instance of the wife; and the statistics show that the number of divorce cases has, relatively to the population, continued about the same.

Ireland.

In Ireland, where the majority of the population are Roman Catholics, and where, apparently, conditions of life differ materially from those in this country, divorce *a vinculo* of parties there domiciled is obtainable (as in England before 1857), by private Acts of Parliament, after a divorce *a mensâ et thoro* has been granted by the King's Bench Division of the Irish High Court (which now exercises the powers of the older Ecclesiastical courts), and (if the suit be by the husband) after judgment has been obtained in an action in the Irish Courts for crim. con., the minimum expense of such proceedings being between 450*l.* and 500*l.* (Mr. Roberts, 42,603, 42,627.)

Since the passing of the Divorce and Matrimonial Causes Act, 1857, there have been 39 Irish Private Divorce Acts. (Mr. Roberts, 42,624.)

Isle of Man.

Divorce *a vinculo* can only be granted by Act of Tynwald, founded on a decree of judicial separation granted by the Chancery Division of the High Court of Justice in the Isle of Man, which, by the Ecclesiastical Civil Judicature Transfer Act, 1884, has jurisdiction in matrimonial matters, and follows the principles upon which the Ecclesiastical courts acted.

Channel Islands.

There appears to be no right to proceed to obtain judicially a divorce *a vinculo*, and we are not aware of any legislative proceedings with that object.

India.

The dissolution of marriage among the Christian communities in India, whether European, domiciled or country born (save that, in the Native States, the Act only applies to British subjects), is regulated by the provisions of Act IV. of 1869, usually called the Indian Divorce Act, under which decrees of divorce may be granted on grounds similar to those which exist at the present time in England, and where, since the marriage, a Christian husband has abandoned Christianity. Jurisdiction to grant any relief under the Act is confined to cases where (*a*) the petitioner professes the Christian religion; (*b*) resides in India at the time of presenting the petition; and (*c*) the marriage was solemnized in India. This latter restriction has been stated to inflict in numerous cases great hardship. We have some suggestions to make thereon, which will be found hereafter (p. 115).

We may note in passing that, by section 497 of the Indian Penal Code, adultery is made a criminal offence in the case of a man who, without the consent or connivance of the husband, has illicit intercourse with a woman, who is, and whom the man knows, or has reason to believe to be, the wife of another man. A note has been supplied by the India Office on this provision of the said code (*see* Appendix XXIII., pp. 153–4. *See also* the edition of the code published in 1909 by O'Kinealy and Caspersz, pp. 337–8).

Canada.

The British North America Act, 1867, by section 91, conferred upon the Parliament of Canada exclusive legislative authority in relation to marriage and divorce, but by section 129, all laws in force in the provinces of Canada, Nova Scotia, and New Brunswick were continued in such provinces respectively, and, by section 146, the provisions of the Act were extended to other provinces admitted to the Union. In the provinces of Nova Scotia, New Brunswick, Prince Edward's Island, and British Columbia, there existed at the time of the Union courts of divorce, and they still continue to exercise their functions. The grounds upon which decrees of divorce are granted in those provinces are as follows: In Prince Edward's Island and New Brunswick, adultery, impotence, or consanguinity, and, in Nova Scotia, the above grounds, and cruelty.

As to British Columbia, by Ordinance dated the 6th March 1867, jurisdiction to exercise all the relief and powers given under the English Divorce Act (20 & 21 Vict. c. 85), has been assumed by the Supreme Court of the province, but grave doubts have been entertained as to its right to do so.

There being no divorce courts in the remaining provinces of the Dominion—Ontario, Quebec, Manitoba, North-West Territories—recourse for relief must be had to the Parliament of Canada by private Act.

Union of South Africa.

(a) *Cape Province.*

According to Roman Dutch law, which is in force in that province, the grounds upon which divorce may be granted are adultery, malicious desertion, unnatural crime, perpetual imprisonment, long absence, and refusal of marital privileges, though it would appear that recourse is seldom, if ever, had to the latter four grounds.

(b) *Province of Natal.*

Divorce is granted on the ground of adultery or malicious desertion for not less than 18 months before the suit. These provisions, however, do not apply to the native tribes, which are governed under their own system of laws.

Newfoundland.

There is no law in force in Newfoundland relating to divorce.

New South Wales.

By the Matrimonial Causes Act, 1899 [Act No. 14, 1899]; Part IV., ss. 12–16, divorce is granted, on the petition of a husband, for the adultery of the wife, and, on the petition of a wife, for the adultery of the husband, if the husband is domiciled in New South Wales when the suit is instituted, or such adultery is incestuous, or is coupled with (1) bigamy, &c., or (2) cruelty, or (3) desertion, without reasonable cause or excuse, for three years or upwards. In addition to the above, on the petition of either party, if domiciled in New South Wales for three years or upwards, divorce is granted for malicious desertion during three years or upwards; on the ground that the husband has, during three years, been a habitual drunkard, and has left his wife without means of support, or has been guilty of cruelty; on the ground that the wife has, during three years, been a habitual drunkard, and has neglected her domestic duties, or been unfit to discharge them; on the ground of imprisonment for three years under commuted sentence for a capital crime, or under sentence of seven years or upwards; on the ground of conviction for attempt to murder or inflicting grievous bodily harm; on the ground of the respondent repeatedly assaulting and cruelly beating the petitioner; on the ground that the husband has been in the last five years frequently convicted, has had sentences of three years in the aggregate, and has habitually left his wife without means of support.

New Zealand.

By the Divorce and Matrimonial Causes Act, 1908 (No. 50 of the consolidated statutes of New Zealand), on the petition of a party domiciled there for two years, the court may grant a decree of divorce for adultery, or for malicious desertion for five years, or on the ground that the respondent has been a habitual drunkard for four years, and has either habitually left his wife without means of support, or has been guilty of cruelty towards her; or the husband, being the petitioner, may obtain divorce, when his wife has, for a like period, been a habitual drunkard, and has habitually neglected her domestic duties and rendered herself unfit to discharge them. Whether the petitioner is husband or wife, divorce may be obtained in the event of sentence for seven years for an attempt on the life of the petitioner or child of the petitioner or respondent; or for the murder of the child of the petitioner or respondent; and further, on the ground that the respondent is a lunatic or person of unsound mind, and has been confined in an asylum or other institution or house in accordance with the provisions of the "Lunatics Act, 1908," for a period or periods not less in the aggregate than 10 years, within 12 years immediately preceding suit, and is unlikely to recover. Irrespective of a wife's rights, as above, the court may dissolve a marriage on the wife's petition on grounds similar to those prevailing in England at the present time.

Queensland.

By the Statutes of Queensland, Matrimonial Causes Jurisdiction Act of 1864 (28 Vict. c. 29), and Matrimonial Causes Act of 1875 (39 Vict. c. 13), the provisions of the Imperial Statutes (20 & 21 Vict. c. 85, 21 & 22 Vict. c. 93, 21 & 22 Vict. c. 108, and 22 & 23 Vict. c. 61), are re-enacted, so that the law is substantially the same as in England.

South Australia.

In South Australia, divorce is granted on the same grounds as in England, except that, in the case of adultery coupled with desertion in a wife's suit, one year's desertion is substituted for two years.

Tasmania.

The provisions of the Imperial Statutes (20 & 21 Vict. c. 85, 21 & 22 Vict. c. 108, 22 & 23 Vict. c. 61) have been made applicable by statute in Tasmania, so that the law is substantially the same as in England.

Victoria.

In Victoria, the petition may be presented and decree granted on the same grounds as those at present existing in England. In addition to the above, on the petition of a petitioner domiciled for two years in Victoria, a decree may be granted on the ground of desertion for three years; on the ground that the respondent husband has been a habitual drunkard for three years, and has left his wife without means of support, or has been guilty of cruelty; on the ground that the respondent wife has been a habitual drunkard for three years, and has neglected her domestic duties, or rendered herself unfit to discharge them; on the ground of imprisonment for three years, under commuted sentence for a capital crime, or under sentence of penal servitude for seven years or upwards; on the ground of a conviction within one year previously for attempt to murder the petitioner, or of having assaulted him or her with intent to inflict grievous bodily harm, or on the ground that the respondent has repeatedly during that period assaulted and cruelly beaten the petitioner; on the ground that the respondent husband has been, in the preceding five years, frequently convicted for crimes, and has been sentenced in the aggregate to imprisonment for three years, and has habitually left his wife without means of support; and on the ground that the respondent husband has been guilty of adultery in the conjugal residence, or coupled with circumstances or conduct of aggravation or of repeated acts of adultery.

Western Australia.

Until 1912 the divorce laws of this Colony, which were regulated by an Ordinance (27 Vict. No. 19), were similar in all respects to the laws of England, but Act No. 7 of 1912, which is to come into operation on a date to be fixed by Proclamation, contains material alterations in the law.

The causes upon which a decree may be granted, as enumerated in that Act, are adultery; malicious desertion for five years; on the ground that the respondent (husband) has been an habitual drunkard for four years, and has either habitually left his wife without means of support or has been guilty of cruelty towards her, or, the husband being the petitioner, that his wife for a like period has been an habitual drunkard, and has habitually neglected her domestic duties or rendered herself unfit to discharge them; on the ground of imprisonment for three years under commuted sentence for a capital crime or under sentence of seven years and upwards, or, the wife being petitioner, that the husband has been in the last five years frequently convicted, has had sentences of three years in the aggregate, and has habitually left his wife without means of support; on the ground of conviction for attempt to murder the petitioner or inflicting grievous bodily harm on him or her; further, on the ground that the respondent is a lunatic or person of unsound mind, has been confined in an asylum or other institution in accordance with the provisions of the Lunacy Act of 1903 for a period or periods not less in the aggregate than five years within six years immediately preceding the suit and is unlikely to recover.

FOREIGN COUNTRIES.

Austria.

In Austria, among Protestants, divorce may be granted on the ground of adultery, malicious desertion, condemnation for crime, immoral habits, infectious diseases, ill-treatment, threats or serious vexations, unconquerable aversion; and among the Jews, on the ground of mutual consent, or the adultery of the wife.

Belgium.

In Belgium, divorce is granted on the following grounds, namely, the adultery of the wife, the adultery of the husband, if he shall have kept his mistress in the common residence, violence endangering life (excès), cruelty (sévices), grave indignities (injures graves), sentence of one of the parties to an infamous punishment involving loss of civil rights, mutual and unwavering consent of the parties expressed in manner prescribed by law.

Bulgaria.

By the law of the orthodox Greek Church, and therefore of Bulgaria, divorce *a vinculo* only is recognized. It may be granted on the grounds of adultery, cruelty, threat or designs against the life of the other party to the marriage, absence of the husband for four years if his whereabouts are unknown, or if his whereabouts are known, without sending his wife means of support; impotence; insanity, epilepsy, idiocy, or syphilis supervening after marriage and incurable; sentence to severe or degrading punishment for theft, fraud, embezzlement or homicide; unsubstantiated charge of adultery made by one party to the marriage against the other; unnatural crime of the husband upon his wife; restraint on religious liberty, drunkenness, when accompanied by squandering property and destroying the home, or an otherwise disorderly or dissolute manner of life; abandonment of the husband by the wife, driving him from his home without sufficient grounds followed by refusal for three years to live with him again.

Denmark.

In Denmark judicial divorces are obtainable on the grounds of adultery, bigamy, desertion (if malicious, after three years, if simple, *i.e.*, absence without known or apparent cause, after seven years), absence for five years where the presumption is that the absentee is dead, imprisonment for life. In addition to the above, administrative divorces may be obtained on the grounds of insanity, separation for three years, sentence for three years' penal servitude.

France.

In France, divorce, which had been introduced for the first time in 1792, but had been abolished at the Restoration in 1816, resumed its place in the Civil Code in 1884. The grounds upon which it is now permitted are adultery, violence endangering life (excès), cruelty (sévices), grave indignities (injures graves), (a cause of which it is, we are informed, extremely difficult to give an exact classification), condemnation of either spouse to an afflictive or degrading punishment.

Germany.

By the German Civil Code of 1900, all the previous laws of the Federal States have been abolished, and the absolute grounds upon which decrees for divorce are now granted throughout the German Empire are adultery, bigamy, crime against nature, attempt on the life of the other party to the marriage, malicious desertion for one year, insanity of three years duration after the marriage, destroying intellectual communion between parties, and holding out no hope of recovery. The court has a discretion to grant divorce on the ground of serious breach of conjugal duties, and dishonourable or immoral conduct, under which all vices and bad habits may furnish a sufficient ground that the above-mentioned criterions apply, and that continuation of cohabitation cannot reasonably be expected.

Greece.

Divorce in Greece is regulated by the Roman and Byzantine laws, in accordance with the provisions contained in the collection of Harmenopoulos. The grounds for divorce are established in No. 117 of the Novellae Constitutiones of Justinian (with some unimportant amendments) and are, on the petition of the husband, adultery; that the wife has attempted the life of her husband, or, being aware of plots against it, has not disclosed them to him; non-disclosure to her husband of knowledge of a conspiracy against the sovereign; without her husband's consent, staying the night at another house, except the house of her parents; without her husband's consent attending races, theatres, or sports; against her husband's wish attending dinners or bathing in the company of men; procuring abortion. On a wife's petition, the grounds are, that the husband entertained schemes against the sovereign, or, being aware of such, has not denounced them to the authorities; that the husband has attempted the life of his wife, or, being aware of plots against it, has not disclosed them to her, or undertaken to prosecute the authors of them; that he has endeavoured to procure her to commit adultery; that he has brought a false accusation of adultery against her; adultery in the conjugal home; adultery in the same town, if persisted in; impotence of husband, existing before marriage and continuing at least three years after it.

Hungary.

Prior to 1894, each religious denomination was governed by separate regulations, but in that year, marriage and divorce in Hungary and Transylvania were regulated by the Civil Marriage Bill of that year which came into force in 1895 and the absolute grounds upon which divorce is permitted, without distinction of creeds, are adultery; unnatural crimes; bigamy; desertion; attempt upon life or serious maltreatment endangering safety or health; sentence of death or penal servitude or imprisonment for five years. The discretionary grounds are violation of marital obligations, other than above; inducing or attempting to induce a child of the family to a criminal act or immoral life; the respondent persisting in leading an immoral life.

Italy.

No divorce is permitted.

The Netherlands.

Adultery and malicious desertion appear to have been grounds for divorce under the Roman Dutch Law. In addition to those causes, imprisonment for four years; grave injuries or ill-treatment endangering life; a lapse of five years after a judicial separation (by consent or otherwise) without reconciliation, are now grounds for divorce in The Netherlands.

Norway.

The Norwegian Act of the 20th August 1909 has effected radical changes in the law. We have obtained a copy of that law, which, with a letter from Höiesterets-assessor Bull explanatory thereof, will be found in Appendix V., pp. 43–5. From those materials it would appear that either party to a marriage is entitled to a divorce, where, at the time of marriage, the other spouse, without the knowledge of the former, has suffered from a physical defect making him or her unsuited for marriage, or from epilepsy or leprosy, or from a venereal disease in an infectious form, or from insanity; or (the husband being petitioner) when the wife has been made pregnant by someone other than the husband; where either party has been guilty of such crimes as are dealt with in the General Criminal Code, namely, the contracting and transmitting, or exposing any others to an infectious sexual disease, which has been contracted in consequence of immoral conduct (section 155, subsection (1)), a serious offence against decency, such as rape and the like, immoral conduct with a child below 16 years, or with the ward of the party, incest, unnatural offences, &c., (sections 191–199, 202–208, 213), adultery (section 209), bigamy (section 220); or such crimes as are dealt with in the Criminal Code, sections 216, 217, 223 to 225, (abduction of children and minors from the care of their parents or guardians), if the crime has been committed with indecent intent; or a crime involving bodily injury of the other spouse, or of any other deliberate crime by which the other spouse suffers injury in body or in health (section 229); or cruelty to children, or exposing them to conditions which are clearly dangerous to their morals (section 380); sentence of loss of liberty for three years or upwards; sentence to hard labour or confinement in an inebriate home for repeated acts of vagrancy or drunkenness; refusal of conjugal rights for two years; insanity for three years with no reasonable prospect of recovery; where a separation has been in existence for two years after formal decree, or for one year after such decree, if both parties assent to its becoming a decree of divorce; where there has been a separation for three years without decree, and no conjugal relations during that time.

Portugal.

Prior to 1910, there was no law of divorce in Portugal. By the law of the 4th November of that year, with a copy of which, as set out in Appendix XXII., pp. 152–3, we have been supplied by the Foreign Secretary, divorce for a number of causes has been instituted.

By Article 4 of that law, those causes are—1, adultery; 2, conviction of one of the major crimes specified in Articles 55 and 57 of the Penal Code; 3, illtreatment; 4, abandonment of home for not less than three years; 5, absence for not less than four years, during which the absentee gives no tidings of himself or herself; 6, incurable lunacy, three years after the date on which insanity has been declared by the competent authorities; 7, separation *de facto* by mutual consent for 10 years; 8, inveterate gambling habits; 9, incurable contagious disease, or any disease which induces sexual aberration.

Further, by Article 34, the non-success of a suit for divorce instituted for causes 1, 2, 3, 4, 8, 9, aforesaid, affords sufficient cause for the respondent in such previous actions petitioning for a divorce.

Sections 35 to 40 permit divorce by mutual consent, subject to the provisions laid down in those sections.

Roumania.

In accordance with the laws of the orthodox Greek Church, only divorce *a vinculo* is recognised, the grounds for which it may be granted being adultery; injuries or illtreatment; sentence to imprisonment; attempt on the life of the other party to the marriage, or failure to warn such party of such attempt, when made by a third party. Divorce may also be obtained by mutual consent, subject to various formalities.

Russia.

In Russia, the ordinances of each church embodied in the General Code of Laws lay down the grounds upon which divorce is to be granted.

For the members of the Russian Church, and for "the Old Believers," the grounds upon which decrees of divorce may be made are adultery; bigamy; impotence existing at marriage; the absence of the respondent for five years without news; sentence of a court of law, under which one of the parties to a marriage is condemned to loss of civil rights involving deportation; the entrance of both parties into a religious order, in cases where there are no children needing parental care; the conversion of a non-christian spouse to the Russian Church, provided such party or the other party to the marriage desires the dissolution of it. Members of the Lutheran Church (other than those resident in Finland for whom the grounds of divorce appear to be adultery, illicit intercourse with a third party after betrothal, and malicious desertion for at least one year), may seek divorce in their consistorial courts on the grounds of adultery; concealed loss of virginity of the wife before marriage; attempt to poison; five years desertion; impotence and repugnance to marital intercourse; refusal to fulfil conjugal duties; incurable infectious disease; madness; depravity of life; cruelty and offensive treatment; attempts by one party to bring dishonour on the other or deprive him (or her) of his (or her) freedom, office, or occupation; unnatural propensities; grave crimes involving sentence of death or a punishment in substitution; penal exile.

Among the Jews, divorces are granted by the Rabbi. The marriage may be dissolved by mutual consent, or on grounds based on Mosaic law.

Mahommedan marriages are dissolvable by mollahs, but we have no information as to the grounds upon which they are dissolved.

The law of Poland is regulated by a decree of the Emperor of 1836, under which there are separate regulations for the members of the Roman Catholic, the Greek Orthodox, the Greek Unified and Protestant Churches, for members of denominations other than the above, and for cases where the religion of the parties to the marriage is different.

Spain.

No divorce is permitted.

Sweden.

The grounds for judicial divorces are adultery; illicit intercourse of either party with a third party after betrothal, or the intercourse of the wife with a third party before betrothal; malicious desertion for one year, provided the absentee has left the kingdom; absence without news for six years; or attempt by one party to the marriage on the life of the other; on the ground that either party is suffering from bodily incapacity, or has concealed the fact of being affected with an incurable contagious disease; sentence of life imprisonment; insanity of three years' duration which is pronounced incurable.

Divorce may also be obtained by direct appeal to the King's Royal Prerogative, where one party has been condemned to death or civil death; or condemned for a gross offence, or one involving temporary loss of civil rights; where one party has been imprisoned for at least two years; on the ground of prodigality, drunkenness, or violent disposition; or irreconcilable aversion and hate, which has lasted after one year's separation *a mensâ et thoro*.

Switzerland.

Prior to January 1st, 1876, the different cantons of Switzerland had individual laws regulating divorce, but after that date the matter was regulated by a federal law throughout the country and is now regulated by the Code Civil of the 10th of December, 1907, which made but little change in the law then existing. The grounds laid down by that Code are adultery; attempt by one party on the life of the other; cruelty (sévices); grave indignities (injures graves); the commission of an infamous crime by one party, or base conduct by one party rendering married life intolerable; malicious desertion for two years; insanity rendering married life unbearable, and which, after three years' duration, is pronounced incurable; conduct rendering married life unbearable.

United States of America.

So far, in dealing with the laws of the various colonies and foreign countries, we have merely set out those laws themselves in a short form and without comment, but in dealing with the United States, to which country frequent reference has been made during the course of this inquiry, we think it desirable, before dealing with the laws themselves, to mention briefly some of the points which have been brought to our attention.

For details we may refer to the evidence presented before us, after careful preparation, by Mr. R. Newton Crane, a member of the Federal Bar of the United States and also a member of the English Bar, one of the legal advisers to the Embassy of the United States in this country; by Mr. J. Arthur Barratt, a member of the United States Supreme Court Bar, of the New York Bar, member of the Council of the International Law Association and of its Committee on Divorce Jurisdiction, one of the legal advisers to the Embassy of the United States in this country; and by Professor J. D. Lawson, member of the State and Federal Bars, formerly President of the Bar Association of Missouri, Dean of the Law School of the State of Missouri, editor of the "American Law Review," Special Commissioner from the American Institute of Criminal Law and Criminology, the American Bar Association, and United States Government. The evidence of these witnesses will be found at Questions 16,306–16,548; 16,549–16,885; 23,773–23,956 respectively. In Appendix XII. A. and B. will also be found the replies obtained by Mr. Barratt to questions addressed by him to legal aid societies in various states of the United States and to American jurists, which contain a large amount of valuable information.

It is commonly asserted that the statistics as to divorce in the United States show that the number of dissolutions of marriage relatively to the number of marriages is exceptionally large, that it is possible there to obtain divorce for trivial causes, and that the facilities which exist of obtaining divorce are such as to be prejudicial to the moral and social interests of the community.

As to the question of statistics, it appears from the evidence of Sir John Macdonell that the highest divorce rate and the greatest increase amongst civilised countries, Japan excepted, are in the United States; the statistics available appear to show that the number of dissolutions was, at the time of the collection of the statistics, in the proportion of about 1 to 12 or 15 marriages. It has, however, been pointed out to us by Mr. J. Arthur Barratt that reliance cannot be placed on the figures, owing to the fact that, though the information with reference to the number of divorces rests on reliable bases, statistics as to the number of marriages are most uncertain. Figures as to marriages can only be got from States where marriages are registered, and up to 1906, in only 25 States of the Union, out of the whole number of 50 States, were there provisions of law for the State registration of marriage (16,606); and in only eight States is there at the present time anything like a complete return of marriage statistics (16,754). In the case of immigrants who settle in the United States in such numbers, a large proportion were married in their native countries, and these marriages are not registered in the United States (16,608–9). Amongst these immigrants it is fairly certain that the percentages of divorce are high; and therefore, though it may be true in a sense that the proportion above referred to is the proportion of divorces to registered marriages, it is not in fact a true proportion to the total number of marriages in the United States. It should also be observed that the census reports of the United States include judicial separations and nullity suits under the head of "Divorce," thus largely adding to the statistics of divorce questions which do not come properly under the head of divorces *a vinculo* (16,670–1).

It is further asserted that what has been described as "secret migration from "State to State in search of easy laws" has materially tended to increase the number of divorces. On this point, it is to be noted that, by the Constitution of the United States, Congress has no power to legislate upon divorce, and, therefore, no federal statute can be passed without an amendment to the Constitution, a difficult proceeding, since to do so requires the consent of three-fourths of all States of the Union. It, therefore, follows that each State legislates for itself in the matter, and this necessarily results in lack of uniformity in the laws existing in the various States. Owing to this lack of uniformity, to laxity of procedure in some parts of the country, to the difference which exists with reference to the duration of domicil or residence necessary to confer on the courts jurisdiction in these proceedings, to the doctrine which we are informed is clearly established in American law that a wife is permitted to acquire a separate domicil from that of her husband, when her

husband has been guilty of a matrimonial offence entitling her to a divorce, and to Article 4, section 1, of the United States Constitution (which provides that "full faith "and credit shall be given in each State to the public acts, records, and judicial "proceedings of every other State,") it is no doubt possible for an inhabitant of one State to go into another State, and, by misuse or fraudulent use of the laws and procedure of that other State, to obtain a decree of divorce for a cause, which occurred while the parties were residing outside the latter State, or for a cause which was not a ground of divorce under the laws of the former State.

This question received consideration from the Divorce Congress held at Washington in February 1906 and at Philadelphia in November of that year, and it seems that its effects have been overestimated. This is the view entertained by Professor Howard (16,592), and assented to by Mr. Barratt.

It is further alleged, as above stated, that divorce is granted in America for trivial causes. As to this Mr. Barratt points out (16,625) that nearly every cause which is permitted in the United States is permitted by the law of some state in continental Europe.

The witnesses differ as to whether the number of causes has a relation statistically to the number of divorces. Mr. Barratt maintains it has none (16,625–9); but this is not the view taken by Mr. R. Newton Crane (16,446–7).

Mr. Barratt points out that, whatever the reason for increase or decrease in percentages may be, such increase or decrease cannot be accounted for by the number of statutory causes for divorce. He refers to the statistics of various States, and shows that, whereas in some States with numerous causes the increase has been slight, or there has been even a decrease, as in Connecticut, in other States, having few causes, the increase has been considerably greater, as, for instance, in New York, where adultery is the only cause (16,625–7). (*See also* evidence of Professor Lawson, 23,857, 23,882–3, 23,910.)

Considering this matter generally, it seems that there are so many factors to be taken into consideration in the United States, that it is not possible to argue by analogy that what may, or is alleged to be, the condition in that country would become so here, if further facilities for divorce were granted. It may well be that the increase in the percentages of divorce in the United States is due to conditions which do not apply in this country, as, for instance, the ease with which marriage can be entered into (Mr. Newton Crane, 16,365–16,371), and immigration (Mr. Barratt, 16,681). There can be no doubt that people, coming from countries or places where the standard of marital conduct may be lower than in the United States, when they find that other standards are there expected, and that the laws of the United States afford relief for the violation of those standards, avail themselves of the remedies which those laws afford (16,699 *et seq.*). It does not seem to be established that the unsettling of family life, which is alleged to exist in some parts of the United States among certain classes of society, is due to any substantial extent, if at all, to the operation of the divorce laws; facilities of travel, increase of luxury, a growing spirit of independence, a resentment of restraint, must all be taken into account; and it may even be suggested that the increase of divorce (an increase which would appear from statistics to be taking place in other countries where there is no suggestion that the sexual and general morality of the country is low), is attributable in many cases to an appreciation of a higher standard which is required, and rightly required, in such matters (16,700–8).

The two witnesses last referred to maintain that the standard of sexual morality in the United States is as high as, or even higher than, it is in England (Mr. Newton Crane, 16,445, 16,543; Mr. Barratt, 16,680). The cause, which heads the list of the numbers of cases due to particular causes, is desertion, the period for which varies in the different States. But it must always be kept in view that in many, if not most, desertion cases adultery also exists, and, in a certain number, the marriage has been in fact already dissolved by death.

As to the grounds, which exist in the various States and Territories of the Union (with the exception of South Carolina) upon which divorce may be granted, we have set out in Appendix XIII. a summary of these, extracted from the United States Census Report, previously referred to, containing a list of the causes which are permitted, and the States in which those several causes are permitted. We think it sufficient here to say that the causes vary from that of adultery, which is the sole cause in the State of New York, to "causes deemed sufficient by the court" in the State of Washington, and that the causes which are permitted in the preponderating number of States are adultery, desertion, cruelty, and conviction and

imprisonment for crime. The first of these causes is permitted, so far as we can ascertain, in all the States and Territories of the Union, with the exception of South Carolina, by the constitution of which State divorces from bonds of matrimony are not allowed. Desertion is a cause for divorce in all the States with the exception of four, namely: New York, the District of Columbia, and the States of North and South Carolina. Extreme cruelty, by which we understand such cruelty, on the part of either husband or wife, as to endanger the life or health of the other party or to render cohabitation unsafe, is admitted as a ground for divorce in 36 States and Territories, and imprisonment in 41. (*See* Appendix XIII., pp. 120, 121.)

As to the courts which administer divorce jurisdiction in the United States, it appears from the evidence of Mr. Barratt (16,706) that this jurisdiction is exercised by the Supreme or Superior Courts for each State, and there is such a court usually sitting in each county of every State, though in some of the less thickly populated parts a judge may sit for more than one county. Litigants thus have the same facilities for bringing actions for divorce, as they have in the Supreme or Superior Courts for bringing any civil action.

In conclusion, it is to be noticed that all questions connected with the law of divorce, its administration and the effects of it in the United States, were very fully considered in 1906 by the National Congress on Uniform Divorce Laws. As a result of their deliberations, a uniform law has been proposed by which provision is made by section 21 of the "Model" Act (fully set out on page 272 of the said Census Report and copied in full in Appendix XXVII., p. 189), for compliance with the "full faith and credit" clause, after the regulations contained in sections 7 to 10 of the "Model" Act have been complied with, but subject to the proviso at the end of section 21—

> "That, if any inhabitant of this State shall go into another State, territory, or country in order to obtain a decree of divorce for a cause which occurred while the parties reside in this State, or for a cause which is not ground for divorce under the laws of this State, a decree so obtained shall be of no force or effect in this State."

By section 3 of this "Model" Act, the causes agreed upon by the National Congress on Uniform Divorce Laws as being sufficient to afford grounds for granting divorce are adultery; bigamy; conviction and sentence for crime, followed by continuous imprisonment for at least two years, or in the case of an indeterminate sentence, for at least one year; extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe; wilful desertion for two years; and habitual drunkenness for two years. Some of the States of the Union have already adopted the "Model" law.

Courts of other Countries.

33. We have thus shortly set out the provisions of the laws of Scotland and Ireland, the principal British Colonies, numerous foreign countries, and of the United States. We have not thought it necessary to investigate the question of the courts by which these laws are administered in all those countries, but we have had before us witnesses who have given us information on this matter from Scotland, Germany, France, and The Netherlands, and it may here be useful to summarise the information we have received.

In Scotland, divorce cases are heard in Edinburgh by certain judges of the Supreme Court, sitting without juries. These judges, before any one of whom a case may be brought, are five in number. The Scottish system for enabling poor litigants to prosecute their cases and maintain their defences will be mentioned hereafter (p. 130).

From the evidence of Dr. Carl Neuhaus, it appears that in Germany divorce petitions are filed in the county courts (Landgericht), composed of three judges, whose jurisdiction is unlimited, that there are nearly 200 of these courts (42,913), that each court is established for a district of about 250,000 inhabitants, and that the districts are mostly of such an area that a party, in order to arrive at a court, has not to travel more than about 30 miles. (42,813–7.)

In addition, however, to the easy access to courts which is thus afforded, poor litigants in Germany are assisted in bringing their cases before a tribunal by the poor law (Armenrecht) by which the right of free legal assistance is granted to every plaintiff or defendant, who produces a certificate of the local police that he is not in a position to pay the fees of the court, and satisfies the court that the proceeding is *bonâ fide*, and that there is a *primâ facie* case. The poor litigant is not compelled

to pay court or lawyer's fees, or the expense of bringing his or her witnesses or of copying documents, and obtains the free service of a lawyer. In the event of success and the defendant having means, the pauper plaintiff is entitled to recover his or her costs from the defendant.

In France, every tribunal d'arrondissement, a court composed of three judges, has full jurisdiction, which includes jurisdiction in divorce. There are 375 such courts. In addition, there is a system in force called the "assistance judiciaire" by which poor people can conduct their cases with no expense. The "assistance judiciaire" is largely used in divorce cases, as will be seen from the tables for the years 1907, 1908, and 1909, supplied to us by Monsieur Mesnil, from which it appears that, in the year 1907, 9,599 applications for "assistance judiciaire" in such cases were made, of which 3,952 were granted, the result of the cases being that the person assisted was successful in 2,628 cases. In 1908, 9,687 applications for "assistance judiciaire" in divorce cases were made, of which 4,204 were granted, the result of the cases being that the person assisted was successful in 2,760 cases. In 1909, 9,807 applications for "assistance judiciaire" in divorce cases were made, of which 4,390 were granted, the result of the cases being that the person assisted was successful in 2,777 cases. The provisions as to "assistance judiciaire," with the statistics above referred to, are given in full in Monsieur Mesnil's evidence (Vol. III. pp. 485–6).

In The Netherlands, there are 23 local courts having exclusive high court jurisdiction in their districts, from which an appeal lies to the courts of appeal, of which there are five. These 23 courts have jurisdiction in divorce in cases where the petitioner is domiciled in the district of the court (43,225). A system of procedure *in formâ pauperis* exists, of which, from the statistics supplied to us by Dr. Bisschop, Appendix XIX., pp. 148–9, considerable use seems to be made.

It will thus be seen that in these countries very much greater facility is afforded to poor litigants for having their matrimonial disputes tried, both by reason of the ease of access to the court and the system of legal assistance, than exists in this country.

Noticeable Points.

34. Without making a detailed comparison under the numerous points which arise, certain striking features are to be noticed from the foregoing statement of the English and other laws, viz.:—

(1) That the whole administration in this country of the laws relating to divorce and other matrimonial causes (except under the Summary Jurisdiction Acts) is concentrated in London, although there are large numbers of the population resident in districts far remote from London.

(2) That in England and some of the British Colonies, which allow dissolution of marriage, there is a difference made between the sexes, whereas in Scotland and most of the other countries mentioned, and in New Zealand and New South Wales, Cape Province and Natal, no distinction is made between the position of a man and a woman, though the two first-named Colonies appear to require compliance with certain provisions as to domicil.

(3) That, while in England adultery is the only ground of divorce (coupled, in the case of a suit by a wife, with certain other aggravating circumstances), in almost all other countries, which permit of divorce *a vinculo*, other grounds are admitted.

PART VII.

Questions.

35. Having given a short account of the present state of the English law, of how that law arose, and of the laws of most other civilised countries, we now proceed to state the questions which seem to us to arise for consideration.

Those questions may be stated as follows:—

(I) **Should any, and, if any, what courts have jurisdiction to hear and determine divorce and other matrimonial causes, at any, and, if any, at what places, in addition to the High Court sitting in London?**

(II) **What should be the extent of such jurisdiction, and what procedure should be adopted?**

(III) **Should any, and, if any, what alterations be made with regard to the exercise of the jurisdiction conferred by the Summary Jurisdiction (Married Women) Act, 1895, and the provisions of the Licensing Act, 1902, relating to separations in cases of habitual drunkenness?**

(IV) **Are any, and, if any, what amendments of the said Acts of 1895 and 1902, and of the procedure and practice thereunder desirable?**

(V) **Should the law be amended, so as to place the two sexes on an equal footing, as regards the grounds upon which divorce may be obtained?**

(VI) **Should the law be amended so as to permit of divorce being obtained on any, and, if any, what grounds, other than those at present allowed?**

(VII) **Are any other, and if any other, what amendments needed in the law, procedure and practice relating to divorce, nullity of marriage, and other matrimonial questions?**

(VIII) **Should any, and, if any, what provisions be made for preventing or limiting the publication of reports of divorce and other matrimonial cases?**

36. It will be observed that the first four questions are concerned with the administration of the law, though they may in some respects involve amendments of the existing law, while the next three deal mainly with alterations in the existing law, and only incidentally with improvements in the present procedure and practice. The last question may be regarded separately.

We have considered the questions with the anxious desire that any recommendations we might make should be of a nature to strengthen, and not to weaken, the national character, to promote the highest possible standard of morality for both sexes and of regard for marriage and family life, and the best interests of society and the State; and that they should provide for the administration of justice in matters with which the inquiry is concerned, in such a way that adequate means should be available for all classes of the community to bring their cases before courts of justice.

37. It will be convenient to make particular observations about the matters involved in each question, when we come to deal with the questions separately, but it seems necessary to indicate, as a preliminary, the views which we entertain as to the principles to be adopted by the Legislature with regard to divorce.

PART VIII.

Consideration of the Basis of the Report.

38. Throughout the evidence given before us we have found no general objection to the consideration of all the above questions, though individual witnesses object to certain of the suggestions which have been made to us, and vary in their views as to the best way of dealing with the different points involved. Although a few of the witnesses, who appeared before us, would like to see the Act of 1857 repealed on religious grounds (and the question of such repeal was open for our consideration), they obviously felt that such a course was not practicable, and the suggestion that the Legislature should now consider marriages absolutely indissoluble may, in our view, be dismissed from consideration. But some of these witnesses, who object to divorce altogether, have frankly faced the view above expressed, and have put forward objections to any extension of the grounds of divorce, and to any facilities for putting the law in force being given beyond those which are at present afforded,

though some of them seemed to feel that whatever the law is, it should not be left unavailable to those who need it, for want of means to enforce it.

39. The main ground urged by those who objected to any extension of the grounds for divorce proceedings was that such extension would be contrary to Christian principles. This subject is discussed in all its bearings in the Chairman's notes above referred to, and in many parts of the evidence, but in our opinion it does not seem desirable that this Commission should attempt to express any definite opinion as to what are the true Christian principles applicable to this subject. Opinions of persons equally learned, equally able, equally pious and honest, equally disinterested and humane, and equally public spirited, have differed and still differ upon the point, although the original materials upon which the differing opinions are formed are of a limited character. From these original materials has grown up an immense literature, which embraces the writing and opinions of early Fathers of the Christian churches, the provisions of ecclesiastical councils, decrees of emperors and popes, penitentials for the guidance of priests, canons of the churches, and writings of theologians and jurists. These productions were necessarily affected by the state of belief and knowledge, which existed at the respective times of their issue, and it seems to us that some of the conceptions on which they are based may fairly be reconsidered in modern times.

We do not propose to attempt the task of giving any summary of these writings and documents nor of the opinions and conceptions to be found in them. They have been extensively examined and discussed in the works of various well-known authors. Broadly speaking, the differing opinions have resulted in the acceptance by Roman Catholics of the doctrine of the indissolubility of marriage (although, as previously indicated, practical relief was afforded by the application of the doctrine of nullity), while Protestant communities have generally treated the tie as dissoluble but have differed as to the grounds upon which it might be dissolved.

40. We think, however, that it is important that we should state the views of theologians and scholars who have been called before us, in order to assist in arriving at a conclusion as to the attitude which should be adopted by the State.

For a full appreciation of this evidence, which was given with much learning and in much detail, we must refer to the Minutes of Evidence, but we think it will be convenient to give a brief summary of what we conceive to be the points of principle stated by each of these important witnesses in relation to the main question of dissolubility.

It will be observed that, upon this main question, there are wide differences of opinion. In the evidence given before us, opinions were maintained in favour of each of the following principles:—

That all marriages are indissoluble.
That Christian marriages are indissoluble.
That marriage is dissoluble on the ground of adultery only.
That marriage is dissoluble on the grounds of (1) adultery, or (2) desertion.
That marriage is dissoluble on other serious grounds based upon the necessities of human life.

The Right Rev. the Bishop of Birmingham, Dr. Gore (now Bishop of Oxford) (Vol. II., 21,238–21,728),

Considers that consummated marriages should be treated as indissoluble in the Church (21,243), but this proposition is limited to Christian marriages, though, *primâ facie*, all marriages entered into in England not specifically Jewish should be treated as Christian (21,505). This view is different from that previously stated in the first edition of his book on the "Sermon on the Mount," in which he expresses the opinion that the exception contained in chapters V. and XIX. of St. Matthew's Gospel does not prohibit the remarriage of an innocent man who has put away his wife for adultery (21,569, 21,576, 21,589).

Rev. Herbert Hensley Henson, Canon of Westminster and Rector of St. Margaret's, Westminster (Vol. II., 22,511–22,913),

Considers that the conditions of divorce are properly to be determined in the light of Christian principle, with reference to the actual necessities and circumstances of men, and that Christ's words in St. Matthew and St. Mark are not legislative (22,579–22,587, 22,606–22,608*a*, 22,715–6, 22,808–22,814).

Monseigneur Moyes, Canon of the Arch-diocese of Westminster and Prelate of the Roman Court (Vol. II., 22,914–23,051),

Considers that a Christian marriage, that is one in which the parties are baptized Christians (22,942–3), which has been consummated (22,940), being a sacrament in which the union of the parties is wrought and ratified by God (22,921, 23,038), has a paramount and immutable character of Divine law, and is absolutely indissoluble, except by the death of either party (22,921).

The Right Rev. the Bishop of Ely, Dr. Chase (Vol. II., 23,052–23,194),

Considers that according to the three earliest witnesses—St. Mark, St. Luke's version of "Q," and St. Paul (the earliest of all)—Christ taught the absolute indissolubility of marriage which is a strong argument for the conclusion that Christ taught that marriage cannot be dissolved for any reason, but that St. Matthew did represent Christ as allowing an exception. He is of opinion that, while much remains uncertain as to the teaching of Christ as to divorce, there is one conclusion absolutely beyond doubt, namely, that there is no version of Christ's teaching and no interpretation of any version of Christ's teaching which does not forbid divorce except on the one and only ground of adultery (23,093, Vol. II., p. 436, 23,175–7).

Rev. W. P. Paterson, D.D., Professor of Divinity in the University of Edinburgh and a Minister of the Church of Scotland (Vol. II., 23,195–23,385),

Considers that the extension of the scope of divorce beyond the specific case of adultery is justified on the ground that, while the ideal which Christ set up is binding upon members of His Kingdom, it ought not to be imposed by force upon a mixed society, including many who are non-Christian or only nominally Christian (23,245), and that the duty of the State in relation to the dissolution of marriage is not to make the Christian ideal compulsory, but to make provision for the relief of those who suffer injustice in marriage, in so far as this shall be compatible with the general interests of society (23,245), and he gives as instances of such grave injustice, malicious desertion, and habitual drunkenness or criminality, and he recognises no distinction between a Christian marriage and a non-Christian marriage in its possible dissolubility (23,268). He would justify divorce when the situation was intolerable from the above causes (23,303, 23,315).

Rev. William Sanday, D.D., Lady Margaret Professor of Divinity at Oxford, a Canon of Christchurch (Vol. III., 38,476–38,671),

Considers that Our Lord's words, however reported, express a moral ideal rather than a positive rule (38,511, 38,556), and that they did not exclude the possibility of exceptions (38,517, 38,520, 38,575, 38,581), that the one exception stated in the New Testament need not be treated as necessarily excluding all others (38,580–1), that the recognition by Christians of a lofty and unqualified moral ideal does not of necessity prevent a Christian State from legislating (as it were) upon a lower level (38,499), and that in determining what other exceptions may legitimately be made to Our Lord's ideal, there is room for a statesman at the present day to consider what is best in the interests of the higher expediency (38,582, 38,670, 38,671).

Rev. William Ralph Inge, D.D., Lady Margaret Professor of Divinity at Cambridge (now Dean of St. Paul's) (Vol. III., 38,672–38,776),

Considers that the doctrine that marriage is absolutely indissoluble cannot be proved from the New Testament, and that Our Lord's prohibition of divorce was absolute in form rather than intention (Vol. III., pp. 256–258). He considers that the duty of a Christian State is to legislate with due regard for the imperfections of human nature, while at the same time recognising the imperative obligation to maintain the unique sanctity of the marriage contract which Christ unquestionably intended to emphasize in the strongest manner (*ib.*, p. 259) (38,774–776), and he does not see why the State should not assume the power of dispensation in a few cases besides adultery, the instances of such cases which he gives being brutal cruelty,

habitual drunkenness, conviction of a felony, and desertion (38,702–38,705) (*ib.*, pp. 256–60). He thinks that the State might permit of divorce being granted on the serious grounds he mentions, and still be acting in accordance with Christian principles (38,774–6).

Rev. James Denney, D.D., Professor of New Testament Theology in the United Free Church College of Glasgow (Vol. III., 38,777–38,989),

Considers that nothing in the law should tend to disparage the Christian ideal of marriage as the permanent union of husband and wife, with a view to family life, a union which is recognised by society and which is the nursery both of Church and State, but that the law has to take account of facts by which in certain cases marriage is unquestionably destroyed, and that, for dealing with those facts, Scripture gives us no authoritative guidance. It neither prescribes nor precludes the remedy of divorce, and of a new marriage, in dealing with any or all of them (*ib.*, p. 265) (38,789, 38,838, 38,913, 38,948).

Rev. J. P. Whitney, Professor of Ecclesiastical History at King's College, London (Vol. III., 38,990–39,105),

Pointed out to the Commissioners the views entertained by the Reformers on the subject, and stated that, though there were differences as to the grounds upon which divorce ought to be permitted, the continental Reformers were agreed on the general principle that marriage was dissoluble, in certain circumstances, such as adultery, which they based on Our Lord's views, and desertion, in which views many extremely learned men in the Church of England concurred (38,996, 39,070–2, 39,079). He himself, however, considers that taking the conception of the Church throughout the greater part of its history, Our Lord certainly laid down a general principle which was absolutely binding upon Christians without any modifications (39,017–8), and that He, with the utmost strictness, forbade a re-marriage [after divorce] of any kind (39,033).

Rev. C. W. Emmet, Vicar of West Hendred, Steventon (Vol. III., 39,106–39,175),

Considers that the New Testament is clear and decisive in its statement of the main principle, but leaves a margin of uncertainty as to possible exceptions, and that the conclusion to be drawn is that we are meant to go to the Bible for principles, not for detailed legislation (39,114). In his view, adultery is clearly an exception to the general principle, and, arguing from the passage in the 1st Epistle of St. Paul to the Corinthians and its probable interpretation, his view is that it is not necessarily the sole exception. He thinks that the Christian Church ought to be able to acquiesce in certain other carefully restricted exceptions, but that whether those exceptions are really necessary is a point which should be decided by the social requirements and conditions of the age (39,116). Nor does he, when expressing this view, see that any distinction should be drawn between Christian and non-Christian marriages (39,128).

Rev. J. Cooper, D.D., Professor of Ecclesiastical History in the University of Glasgow and a Minister of the Church of Scotland(Vol. III., 39,176–39,303),

States that although the Church of Scotland recognises divorce for adultery and desertion, he considers it doubtful whether the clause "except for fornication" was ever spoken by Our Lord, and having regard to the uncertainty which is increasing among scholars on this point, he is of opinion that marriage should be treated as indissoluble (39,192–197).

Rev. Canon Hastings Rashdall, Fellow and Lecturer of New College, Oxford (Vol. III., 39,304–39,422),

Considers that while the only principle that is absolutely binding upon Christians for all time is, that the ideal of marriage is life-long monogamous union, a Christian may quite well recognise that the conditions of marriage are a matter, which the State should regulate, in accordance with its view of social expediency, provided that, in the notion of social expediency, is included the cultivation of a high ideal of life and character and not merely the promotion of maximum pleasure. He is of opinion that no principle of religion or morality forbids divorce with liberty of remarriage,

if a sufficient social advantage can thereby be secured, including, in the notion of social advantage a strong public opinion in favour of permanent marriage and fidelity to marriage bonds, and a generally healthy state of feeling as to sexual relations (39,306, paras. 4 and 7).

Rev. H. B. Swete, D.D., Regius Professor of Divinity, Cambridge (Vol. III., p. 316),

Considers that in its original form, Our Lord's condemnation of remarriage after divorce was absolute, *i.e.*, that He stated no exception, but he does not draw the inference that it is not lawful for the Church, or for a Christian State, to permit divorce or re-marriage in any circumstances. Both, however, are strongly to be deprecated, because both are departures from the Christian conception of marriage; neither was contemplated by Our Lord; and, if they must be conceded, this should clearly be done only under grave necessity, and because of the σκληροκαρδία [hardness of heart] which the new law of love has not yet dispelled (page 317).

Rev. W. Emery Barnes, D.D., Hulsean Professor of Divinity, Cambridge (Vol. III., 39,423–39,459),

Considers that the words "except for fornication" belong to Our Lord's own teaching, and that divorce (which is merely declaratory of a fact) may take place for the cause of fornication (39,426), which word the witness takes to mean all sexual immoral conduct (39,427–9). He does not regard the teaching to be found in the Gospels as teaching the absolute indissolubility of marriage, but its dissolubility only on the one ground of sexual immoral conduct after marriage (39,431). He could imagine the possibility of other things than adultery really destroying the bond of marriage effectively (39,436).

Mr. R. L. Blackburn, K.C. (Vol. III., 39,460–39,554),

Chancellor to the Primus of the Episcopal Church in Scotland, who attended by his request and the request of the Bishops of that Church, stated that the attitude of the Episcopal Church in Scotland in the matter of divorce is the same as that adopted by the Church of England (39,462), and that the first-mentioned Church adopted the resolutions passed by the Lambeth Conference in 1888, which were reconsidered and repassed in 1908, and will be found set out in full later. He, however, pointed out that the Consultative Council of the Episcopal Church in Scotland recently passed a canon (which he expected would be ultimately adopted as a canon of the church) to the effect that—

> "no clergyman shall perform the marriage service for either of the two persons between whom divorce has been pronounced during the lifetime of the other party" (39,465);

and that in his view the Episcopal Church in Scotland, which has always held the view that desertion is not one of the grounds for divorce justified by Scripture (39,495), would also forbid re-marriage by a clergyman after a divorce on the ground of adultery whether the person was innocent or guilty (39,496–499, 39,507–508).

Rev. J. Scott Lidgett, D.D., President of the Wesleyan Methodist Conference and Warden of the Bermondsey Settlement (Vol. III., 39,717–39,780),

Considers that, even supposing the conditional words "except for the cause of adultery" have been introduced from another source, it hardly follows that they are spurious or have been simply introduced by reason of the infirmity of the flesh, and that moreover, after the long usage and the long understanding of the Gospels, it would at the present time be impracticable to turn aside from what has been so long the *textus receptus* for popular, as well as for scholarly, purposes everywhere (39,720).

The Right Rev. Pearson M'Adam Muir, D.D., Minister of Glasgow Cathedral and Moderator of the General Assembly of the Church of Scotland (Vol. III., 39,858–40,030),

Considers that it has always been taken for granted in Scotland that Our Lord's words are the basis for the grounds of divorce (39,971), and further that divorce for desertion is supposed to be the Scriptural inference, and is regarded as in accordance with the spirit of the New Testament (39,973).

Mr. C. N. Johnston, K.C., LL.D., Procurator of the Church of Scotland (Vol. III., 40,031–40,226),

Considers that the recognition of adultery and desertion, as grounds for divorce by the State, has been in harmony with the general law of the Church (40,035), but he does not consider that, as regards desertion, it originated on scriptural grounds, though those who advocated it would endeavour to show that it was within the sanction of Scripture (40,209).

Mr. Frederic Harrison, President of the Positivist Committee, 1880–1905 (Vol. III., 40,226*a*–40,257),

Considers that from the strictly religious point of view of the Positivists, there is normally and regularly neither divorce nor re-marriage, even though one spouse be left physically, but not spiritually, widowed (40,235).

Mr. Isaac Sharp, General Secretary of the Society of Friends (Vol. III., 40,258–40,292),

Does not suggest, on behalf of the Society of Friends, that the present divorce laws are contrary to the principles of the Society of Friends (40,290), but advocates that, as the Society has always proceeded upon the principle of the equality of the sexes in spiritual matters and in Church government, they should be placed on an equality as to causes for divorce (40,264–5, 40,289).

Mr. H. W. Hill, Secretary of the English Church Union (Vol. III., 40,293–40,359 and 40,438–40,444),

Considers that divorce is contrary to the law of Christ, as declared by the Church in the Book of Common Prayer where it deals with the marriage service, and in the Canons of the Church of 1603, of Canterbury and York of 1604, Canons 106, 107, 108, and that these are in accordance with the Gospel teaching (40,302–8), and he considers that there is no substantial difference between his opinion and that entertained by Mr. Wood as to the operation of the pre-Reformation canon law (40,438, 40,440).

Rev. E. G. de Salis Wood, B.D., Vicar of St. Clement's, Cambridge, Member of the Council of the English Church Union (Vol. III., 40,360–40,437),

Does not base his view that marriage is indissoluble upon any special Christian dogma, but bases it upon the fact that he regards marriage as a Divine institution, instituted in the time of man's innocency, that is, that, along with the creation of man, the Creator intended that there should be marriage between man and woman, and that it was not owing to the choice of man and woman that this condition of marriage arose, but that it was of Divine, not of human, origin (40,372–3). He considers that the Church holds marriage to be indissoluble, not only in the case of Christians, but of non-Christians also (40,384–5).

With regard to the teaching of the New Testament, he considers that, without any exception, marriage is indissoluble, and therefore divorce *a vinculo* impossible (40,387). Generally his view is, that the law of the Church of England rests, not upon the Canons of 1603, nor upon the Prayer Book, but upon the fact that the Canon Law, at any rate prevailing in the Western Church, including England, up to the time of the Reformation, was decisive against the theory that marriage was dissoluble, that no change was made at or after the Reformation in the law of the Church, and, therefore, it remains to this day as it was before the Reformation (40,387, 40,402).

Mr. A. J. Shepheard, Chairman of the General Purposes Committee of the Congregational Union, Secretary of the Protestant Dissenting Deputies (Vol. III., 41,785–41,855),

Presented the view of the Congregational Union that there should be no extension of divorce, beyond the one ground of unfaithfulness, but he also stated that, with regard to the scriptural ground, there was difference of opinion amongst Congregationalists as to whether Christ's command was absolute, without exception, or whether it allows one exception, or whether there may be more than one exception, all these views being held (41,821–2).

Rev. J. D. Jones, M.A., B.D., Ex-chairman of the Congregational Union of England and Wales (Vol. III., 41,956–42,017),

Stated that the general view of the Congregational Union was that adultery should be the sole ground, this opinion being based partly on scriptural reasons and partly on the general conception of marriage which obtains amongst Congregationalists (41,967–9), but some members expressed views in favour of divorce on other grounds (41,973–6).

41. Communications were addressed to various Church bodies, in addition to those to which the witnesses already mentioned belonged, and the following resolutions or statements were forwarded by some of them to the Secretary and put in evidence by him (42,018, *et seq.*) :—

The British and Foreign Unitarian Association.

The committee did not feel that there was any occasion for the association to be specially represented before the Commission.

The Baptist Union of Great Britain and Ireland

Did not think they could usefully give evidence.

The Primitive Methodist Church

Expressed the opinion that there should be equality, as between the sexes, in relation to the grounds of divorce.

The Salvation Army.

Expressed the view that, having regard to the evidence already placed before the Commission, they did not think they could usefully occupy the time of the Commission further.

The General Assembly of the Presbyterian Church of Wales

Expressed the view, "that whilst equal facilities should be afforded to all classes "of the community of obtaining divorce where the bonds of marriage have been "violated by either party, great care should be exercised in any legal changes that "may be effected lest they should diminish the sanctity and obligation of the "marriage vow," and "that the legal and moral liability should be the same with "regard to both sexes."

The Presbyterian Church of England.

Expressed the view that adultery was the only cause which the Church recognises as a proper ground for divorce, and believing adultery to be equally sinful on the part of the husband and of the wife, regards adultery alone, even if unaccompanied by cruelty, as a sufficient ground for divorce.

The Greek Church.

The Great Archimandrite felt himself unable to give evidence or prepare a memorandum.

42. The questions upon which the witnesses above referred to have expressed their views have been the subject of consideration at many ecclesiastical assemblies of various degrees of authority, during the last few years. We do not consider it necessary to cite the conclusions of any of these assemblies, with the exception of that known as the Lambeth Conference of Bishops in 1888. "That Conference was not indeed "a council, and did not set forth its resolutions as authoritative; but there is no "representation of the Anglican Church to which more weight will be universally "accorded . . . ." " . . . . There can, however, be no doubt that the "resolutions of the Lambeth Conference are by far the most important utterance on "the subject which the Anglican Church has delivered for centuries." (Mr. Watkins, "Holy Matrimony," pp. 430, 431.)

The Conference adopted three resolutions out of four drafted by a committee, the chairman of which was the Bishop of Chester. Those adopted are as follows :—

> (A) "That, inasmuch as Our Lord's words expressly forbid Divorce, except in the case of fornication or adultery, the Christian Church cannot recognize Divorce in any other than the excepted case, or give any sanction to the marriage of any person who has been divorced contrary to this law, during the life of the other party.

(B) " That under no circumstances ought the guilty party, in the case of a divorce for fornication or adultery, to be regarded, during the lifetime of the innocent party, as a fit recipient of the blessing of the Church on marriage.

(C) " That, recognizing the fact that there always has been a difference of opinion in the Church on the question whether Our Lord meant to forbid marriage to the innocent party in a divorce for adultery, the Conference recommends that the Clergy should not be instructed to refuse the Sacraments, or other privileges of the Church, to those who, under civil sanction, are thus married."

These resolutions were reconsidered and passed again in 1908 by the Lambeth Conference in that year.

43. The evidence of the late Rev. Dr. Hermann Adler, formerly Chief Rabbi in England, and of Mr. Israel Abrahams, Reader in Talmudic and Rabbinic literature in the University of Cambridge, on the subject of the Jewish views on divorce will be found in Vol. III., pp. 406–411 and pp. 228–237 respectively.

44. We may conclude this summary by referring to the speech delivered by Mr. W. E. Gladstone, on the 31st of July, 1857, in opposition to the second reading of the Bill of that year, in the House of Commons, when he said :—

" Now, Sir, it is not to be dissembled that a very great diversity of opinion prevails with respect to the true construction to be put on Scripture in this matter. There are, in the first place, those who think that the prohibition of divorce—that is, divorce carrying with it the power of re-marriage—is absolute. There are those who think that there is in Scripture permission to marry after divorce in case of adultery alone, but that the permission is limited to the innocent man, and that there is not given to the woman, under any circumstances, liberty to marry. That I believe to be the most ancient opinion of the Christian Church after the old law, as I shall call it, of indissolubility. There are those who go one step further. They give liberty of divorce and re-marriage both to the innocent man and to the innocent woman. There are others who give liberty of divorce after adultery to both parties, if they are innocent, and to the man, although he is guilty. There are others, and that is the description of the Scotch law at the present moment, who give it to both whether innocent or guilty, provided there is no intermarriage between the guilty parties. There is another class that permits the intermarriage of the guilty parties, and there is another which considers that divorce may be permitted, not only for adultery, but for other causes. . . . . We have many causes far more fatal to the great obligations of marriage, as disease, idiocy, crime involving imprisonment for life, and which, if the bond be dissoluble, might be urged as a reason for divorce; . . . . With respect to the great question of the indissolubility of marriage, let me observe that we had too much dogmatism, but the length to which I should push the argument is this—That the Gospel was intended to work out a certain great and provident result; and the mode of attaining this result, the most precious and blessed for mankind at large, was, in the wisdom of God, not by means of commands and forms in a rigid shape, but rather by the infusion of a new spirit into the precepts of the law, a spirit that pervaded every artery and vein of society, raised its tone from the degradation of heathenism, abolished the cruel sacrifice of human life, abolished the exposure of children, abolished polygamy, abolished slavery."—(Hansard, 3rd series, vol. 147, 838–841.)

45. It seems clear that no common accord or understanding has been reached, even at the present day, although the controversies have turned and still turn mainly upon the actual words used in passages of Scripture, to which the witnesses have referred.

46. Having adverted to this difference of Ecclesiastical opinion, we think we should point out as a striking feature of the evidence that theological difficulties have weighed little with the great mass of the lay witnesses, and, that among those who feel them, there are great differences of opinion. With few exceptions, the lay witnesses pass them by, as if they concerned theologians rather than the practical legislator. English laymen seem generally to base their views, not upon ecclesiastical tradition or sentiment, but upon general Christian principles, coupled with common sense and experience of the needs of human life.

It has to be remembered that members of Christian Churches are not alone concerned in the matters which form the subject of our inquiry. There are large numbers of persons, subject to the State, who do not belong to any Christian communion, or are only nominally Christians, and are not interested in the theological points upon which opinions have been expressed before us.

47. The result is that we are unable to find any general consensus of Christian opinion, which would exclude any of the questions stated above from being freely considered. In view of the conflict of opinion which has existed in all ages and in all branches of the Christian Church, among scholars and divines equally qualified to judge, and the fact that the State must deal with all its citizens, whether Christian, nominally Christian, or non-Christian, our conclusion is that we must proceed to recommend the Legislature to act upon an unfettered consideration of what is best for the interest of the State, society, and morality, and for that of parties to suits and their families.

PART IX.

Conclusion as to the Basis of the Report.

48. We have come to the conclusion that our Report should proceed upon the basis that the State should not regard the marriage tie as necessarily indissoluble in its nature, or as dissoluble only on the ground of adultery; but, regarding the dissolubility of the tie as not limited to the ground of adultery, may allow other grave causes. What those causes are, and how they are to be determined, will be considered hereafter.

49. We are thus enabled, and consider it our duty, to examine the expediency of reform in relation to all the questions, which we have stated for consideration.

50. After the long inquiry upon which we have been engaged, and after close consideration of the mass of evidence which has been laid before us, we are of opinion that there is necessity for reform in this country, both in procedure and in the law, if the serious grievances which at present exist are to be removed, and if opportunities of obtaining justice are to be placed within the reach of the poorer classes. So far from such reforms as we recommend tending to lower the standard of morality and regard for the sanctity of the marriage tie, we consider that reform is necessary in the interest of morality, as well as in the interest of justice; and in the general interests of society and the State. We shall deal with these matters more fully, when we come to examine into the nature and extent of the reforms, which we think should be adopted.

51. It will be convenient to refer first to the necessity for the reform of procedure. It is beyond all manner of doubt established, by the evidence before us, that the cost and inconvenience of proceedings in London place such proceedings beyond the reach of numbers of the poorer classes. The matter could not be put more clearly than it was by Mr. Justice Bargrave Deane, who has had more experience of the Divorce Court than any other witness, having been in practice in that court at the bar as junior and leader for over 25 years, and a judge of the court for the last seven years. His evidence on the point was as follows:—

> "791. Perhaps on some of the matters we have to ask about your earlier experience will be very useful. You were counsel at that bar for the whole of your practice?—For over 25 years."
>
> "792. In the Probate and Divorce Division?—Yes."
>
> "793. So that you came personally into contact with the solicitors, and, of course, the parties to the suits?—And with the King's Proctor, which is perhaps more important."
>
> "794. I do not think that anybody perhaps possesses so much experience of the court as you do yourself. Now have you your memorandum which you have prepared, before you?—Yes, I have."
>
> "795. The first part deals with the question of courts, and I see you commence by saying that relief should be open to all, so far as it is possible to make it so. Perhaps, without going through the memorandum, you will give me a short statement of your views on the question of local tribunals?—I have approached this question, and I have always considered it rather from the moral point of

view than anything else; what will most tend to morality. I do not think you ought to look at what is expedient, or what is cheap, or anything of that kind; but what will make for the morality of the country, and my view is, that from that point of view, the question of divorce is more a question for the poor than the rich. The poor are more liable from want of education, and from want of surroundings, to fall into immorality than the rich. The rich have their homes, and their comforts, and their friends, who are of a different position, and who can, by their own advice and conduct, keep people straight; and therefore I feel that this Commission is dealing with the question of real honest morality. Apart from that, of course there is the question, which is the general question, of 'a law for the rich and a law for the poor.' That, of course, is so commonplace that I need not go into it. I think the divorce laws should be equally open to the poor as to the rich, in the sense that they require it as much as the rich do, and more so, in my opinion."

"796. Do you find, in your judgment, it is so at present?—Yes."

"797. I mean, do you find that poor people cannot, practically, owing to expense and otherwise, avail themselves of the High Court?—They are absolutely debarred from it, except those who live within reach of London, or who have a little more money than others, or who have saved up."

"798. Do you find that saving up has taken many years in some cases?—Many years. I have known a man take 10 years to save money for his divorce, and during all that time he was living on in a condition of being neither married nor unmarried. He was living like that all those years."

"799. I remember a case of 20 years?—Well, I have known of 10. I do not remember 20."

"800. Still, it is quite common for people to save for many years?—Yes. Now the question of divorce for the poor must mean local courts; you cannot bring them to London—it is impossible; and when you talk about local courts you are at once met with the great difficulty of harmony."

52. These statements are supported by practically the whole of the evidence which has been given before us on the question of the administration of justice. It is obviously unsatisfactory that, while courts have been established in which the poor can sue and be sued in respect of small debts and torts and compensation for injuries, they should have no means of redress in these graver matters, except in so far as they are dealt with under the jurisdiction possessed by the magistrates and justices in separation and maintenance cases.

53. It has been said that there is no demand for reform in this respect. This point will be dealt with fully under the head of Question I. later on, where we express the opinion that there is a real need and demand for reform.

54. It has been further said that it would militate against the morality of the poorer classes, if facilities for bringing their divorces and other matrimonial cases before the courts were extended, beyond those which at present exist. The evidence before us, and other general considerations, do not lead to this conclusion. The state of social morality before the Act of 1857 was the subject of strong comments, from time to time, by eminent preachers and writers, some of which, referred to by Canon Hensley Henson, will be found in his evidence (22,527–82). Mr. Bishop, whose book on "Marriage, Divorce, and Separation" is a standard work, writes thus of the period before 1857 (Vol. I., sec. 51, ed. 1891, pp. 21–2):—

. . . . "Indeed it is well known that in England, where divorces from the bond of matrimony have till lately been attainable only on application to Parliament, in rare instances, and at an enormous expense, rendering them a luxury quite beyond the reach of the mass of the people, second marriages without divorce, and adulteries, and the birth of illegitimate children, are of every-day occurrence; while polygamy is in these circumstances winked at, though a felony on the statute book. Laws punishing adultery, except as an ecclesiastical offence, are there unknown; and they are so in countries generally where divorces are not allowed, or allowed but for a single cause."

Section 52. . . . . "That the wrongs whence come divorces are evils no one denies. If the refusal of divorce would prevent them, all would pray for it. But the experience of every State and country withholding this redress is practically, however men theorize, that no form of matrimonial delinquency is

less prevalent there than elsewhere. And to the extent to which separations actually occur, the community is remitted back to the condition it would be in if marriage itself was abolished. Nor is there any subject other than marriage, upon which any man claims that the commission of a wrong can be prevented by the law's denying redress to the injured person."

55. The statistics of cases heard in the divorce court from its establishment to the present time show that the rate of increase of these cases is only rather more than the rate of the increase of the population. The statistics are given under the head of Question I. at p. 54, where the figures showing the increase of population are also given.

It will be convenient here to set forth the table, given in the Civil Judicial Statistics for 1910, p. 84, showing the position in life of the married persons who have been petitioners and respondents, in all matrimonial suits commenced in the Divorce Division in 1910. The total number of suits is 908, and on p. 29 thereof it appears that, of these, 755 were for divorce.

Husbands' Occupations at Date of Marriage.

(1) Occupations.	(2) 1910.	(3) 1909.	(4) Annual Average, 1906–10.
AGRICULTURE :—			
Farmers	16	17	16·0
Other persons	6	2	4·8
TOTAL	22	19	20·8
MINING :—			
Mine owners and managers	2	1	·8
Miners	9	20	13·8
TOTAL	11	21	14·6
MANUFACTURERS (including all persons employed in factories and workshops, and in building and engineering works) :—			
Builders and decorators	16	20	17·6
Metal workers	17	25	24·0
Furniture trades, wood workers, &c.	6	18	16·2
Makers of textile fabrics	7	9	9·4
Makers of clothing, &c.	11	21	16·8
Brewers and distillers	1	5	3·6
Makers of articles of food, &c.	3	6	4·6
Printers	9	13	9·6
Other trades	15	10	22·8
Not specified, labourers	17	22	22·8
Not specified, others	16	23	15·6
TOTAL	118	172	163·0
NAVIGATION AND FISHING :—			
Masters, mates, &c.	5	4	5·8
Seamen	8	9	6·6
Fishermen	—	—	1·2
Others	5	12	6·8
TOTAL	18	25	20·4
INLAND TRANSPORT (those employed on roads, railways, canals, &c., and the post office) :—			
Railways	7	9	9·8
Road traffic (coachmen, cabmen, carmen, &c.)	23	13	16·4
Post office	7	7	5·4
Docks, canals, &c.	1	—	2·2
TOTAL	38	29	33·8

(1) Occupations.	(2) 1910.	(3) 1909.	(4) Annual Average, 1906–10.
TRADE (including the clerical and business staff attached to mines, factories, &c.) :—			
Merchants, directors, &c.	58	49	45·2
Brokers, agents, &c.	58	59	54·2
Secretaries, clerks, &c.	55	72	61·0
Travellers, salesmen, &c.	43	46	43·0
Porters, messengers, &c.	9	8	9·4
Publicans, hotel-keepers, &c.	30	40	34·6
Dealers in articles of food	34	35	37·0
Dealers in clothes, furniture, &c.	19	9	12·6
Other dealers	38	35	40·2
TOTAL	344	353	337·2
DOMESTIC SERVICE	12	10	11·2
PROFESSIONAL EMPLOYMENTS, &c. :—			
Civil servants	5	3	5·2
Municipal officers, &c.	—	5	1·0
Military and naval officers	38	32	34·2
Soldiers and naval seamen	18	20	24·2
Police	7	4	5·0
Clergymen	6	5	6 4
Barristers	8	5	5·4
Solicitors	9	16	13·0
Law clerks	2	1	2·2
Physicians, surgeons, &c.	30	32	26·0
Veterinary surgeons	2	1	1·0
Schoolmasters, &c.	10	7	7·8
Students	2	1	2·0
Accountants	7	6	6·8
Journalists	13	11	10·2
Engineers, architects, &c.	52	39	44·4
Painters, &c.	14	7	8·6
Actors, musicians, &c.	40	35	39·8
Other professional occupations.	4	14	13·8
TOTAL	267	244	257·0
UNSPECIFIED OCCUPATIONS:—			
Gentlemen, esquires, &c.	71	106	83·0
Not stated	7	4	5·2
TOTAL	78	110	88·2
GRAND TOTAL	908	983	946·2

56. It is, of course, difficult to gauge exactly that of which no direct proof can be given, but so far as we are able to judge from the evidence and from general experience, we do not think that the standard of sexual morality is lower to-day than it was 50 or 60 years ago. Many symptoms and tendencies indicate the contrary, and progress would, we should hope, be greater, if the law affecting the matrimonial relations were placed upon a footing more consistent with the exigencies of human life than it is at present. We may refer to the opinion of a well-known writer and thinker who says:—

> "I do not believe that there is any real reason to think that the standard of domestic morals in England has been impaired by the strictly limited right of divorce which was granted by the Act of 1857. The scenes of shame and vice and domestic wretchedness that are often disclosed in the Divorce Court are certainly not produced by it, though much misery and wickedness which would otherwise have festered in lifelong secrecy are brought by its action into the light of day . . . .
>
> "Some good judges are of opinion that the standard of domestic morals, in a considerable section of the upper classes in England, has in the present generation been lowered, and that principle and practice have alike grown more lax. It is extremely difficult to arrive at any accurate judgment on such a subject, but it may, I think, be confidently asserted that, if such a change has taken place, it has been due to quite other influences than the divorce law. Sudden and enormous increase of wealth brings with it luxury, idleness, and self-indulgence. Cosmopolitan habits of life break down old customs and introduce new manners. The decay of ancient beliefs loosens many ties, and a few bad social influences in high places will affect the tone of large sections of society. On the whole, it seems to me that the signs of increasing moral laxity in England are more apparent in other directions: in increased worldliness and hardness, and craving for wealth and pleasure, among the young; in the increased social influence of dishonestly acquired money; in the frequency, the cynicism, and the success of gross instances of political profligacy."*

57. In considering the question as to whether or not it would militate against the morality of the poorer classes if further facilities were afforded to them of bringing their divorce and other matrimonial cases before the courts, we think it of the utmost importance to have in view the state of things, which the evidence discloses as existing at the present time and the effect of the present absence of facilities. It is obvious that if the law on the one hand recognises matters as intolerable wrongs for which it gives legal remedies, and on the other hand places those remedies beyond the reach of those who need to use them by reason of cost and inconvenience, such persons must either take the law into their own hands, and apply their own remedies, or be compelled to submit to hardships which the law has stamped as intolerable.

58. According to the evidence the standard of morality amongst the very lowest section of the community, sometimes known as the "submerged tenth," is deplorable. We refer on this matter to the evidence of Mr. Robert Holmes. It may be that the alterations in the administration of the law, which we suggest, will not at once produce a noticeable effect upon this class, but we think that they should not be shut out from all possibility of appealing to the law.

59. When classes in better circumstances than this are considered, as, for instance, artisans and others, the evidence shows, as might be expected, that a generally high standard of morality with regard to marriage exists, but that these classes, owing to proceedings for divorce being beyond their reach through cost and inconvenience, are exposed to special temptations to disregard the marriage law. The evidence shows illustrations of this.

For instance, a working man whose wife leaves him to live with another man, is practically compelled to take a housekeeper to look after his children and home, and the accommodation therein is such that, as witnesses point out, immoral relations almost inevitably result. So again, in the case of a woman, whose husband leaves her and fails to provide for her, she endeavours to support herself and her children by

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* "Democracy and Liberty," by William E. H. Lecky (1896), Vol. II., pp. 168, 169.

letting lodgings, and the evidence shows how frequently this results in an irregular union with a lodger, or if she goes into service and meets some man to whom she becomes attached, but whom she cannot marry, similar results are apt to follow.

These consequences seem to occur to a very large extent in cases of separation orders, when there is no reconciliation; more especially in cases of men, but they seem also to follow frequently, when there has been no such order.

We think it useful to refer in particular to the evidence of Robert Ernest Moore, barrister-at-law, who has been associated with the Poor Man's Lawyer Department at Cambridge House, Cambridge University Settlement, Camberwell Road (4804–19), Charles William Panton Barker, clerk to the magistrates of the county borough of Sunderland (10,821–2), Percy T. Pearce, solicitor, Plymouth, selected by the Plymouth Law Society to give evidence on their behalf (11,385), Robert Holmes, police court missionary, Sheffield, who was against any alteration in the divorce law (18,018), John Palin, police court missionary at Middlesbrough (18,203–7, 18,243–5), William Fitzsimmons, police court missionary at the Thames Police Court, Stepney (19,473), Miss Lidgett, a member of the St. Pancras Board of Guardians (20,138), and Dr. Scurfield, medical officer of health for Sheffield (21,919–24). A number of other witnesses speak to the same points.

One or two illustrations may be given out of the great number placed before us to show how the impossibility of procuring divorce operates.

We set out one, out of the number given by Dr. Scurfield (Vol. II., p. 390 *et seq.*):—

> "The husband of F. M. turned out to be drunken and unfaithful. She had been in domestic service before marriage. She left her husband on account of his behaviour, and went back to service.
>
> "She has not seen her husband for several years, and does not know whether he is alive or dead.
>
> "She now lives happily with J. D., who is an engineer's labourer. They have two children. The house is clean and comfortable, and to all outward appearances satisfactory.
>
> "J. D. and F. M. would like to be legally married."

Cases somewhat too long to set out in the Report are given in the evidence of Mr. Frank Rowland, solicitor, Accrington (Vol. II., p. 227), as typical.

Dr. S. G. H. Moore, Medical Officer of Health for Huddersfield, said (Vol. III., p. 121), "a very long list of examples might be cited with, perhaps, variation as to detail though "the essentials appear to be identical in all the cases," and he gave the following examples:—

> "(1) A gas stoker, R. E., having three children by his wife, drunken, unfaithful, and cruel; his wife left him seven years ago; she is now living with G. P.; there are two children of this irregular union; the home is clean, the children are well cared for, but they are bastards (I use this word deliberately in the attempt to convey, with full force, the horrible disability under which they must labour, all their lives)."
>
> "(2) R. C., a tram driver; his wife now living a life of ill repute in Leeds, he has formed a union with G. W., there are three children; they are fine children, well cared for and their father and mother live happily together, yet they, though innocent, are bastards."
>
> "(3) H. S., mill-hand, an alcoholic lunatic, detained in an asylum several times; when he comes out he is a terror (please accept the word in its literal sense); he is a terror to his family, but three of the children are at wage-earning ages; no illicit union has been formed."
>
> "(4) R., a gardener; wife a lunatic, has been in an asylum for a dozen years; this man has relations who have helped and restrained him but he has recently formed an irregular association with a woman, who was, first of all, his housekeeper. The arguments, with which he defends his action, may not be logical or they may, but they are, at least, forceful, and, in effect, satisfy his neighbours."
>
> "(5) M. B., after having one child by her husband which died shortly after birth, was compelled to leave him and commence working again for herself on account of his drunken habits and his cruel and immoral conduct. After a while she formed a union with another man."

Dr. Ethel Bentham gives several illustrations (Vol. III., p. 31), to which we refer.

Mr. R. J. Parr, Director of the National Society for the Prevention of Cruelty to Children, gives numerous illustrations some of which relate to the question of insanity and may be quoted:—

"36,627. Now we pass to paragraph 20?—Then there are the cases of insanity where relief should be obtainable. Here are three typical cases:—

"C.O. 83,407, February 1910.—S. cohabits with a man, her husband being helplessly insane and in an asylum for ten years. There are two children of the marriage and one of the illicit union."

"C.O. 83,611, February 1910.—M. Husband in an asylum, said to be a hopeless case. The woman works, receives parish relief, and some help from children."

"C.O. 83,608, February 1910.—J. Wife in an asylum. No probability of her release. The man is cohabiting with a widow."

"In each of those cases there has been no prosecution, but we were called in because of what I said just now. Some of the children were being improperly treated, and in each case we found a warning by the officer was sufficient. The inspector warned in each case, and on following that up with supervision we found that the children of the marriage were being properly treated, as well treated as the children of the illicit union. Warning had the desired effect."

"36,628. The two typical cases resulted in an illicit union because the other party to the marriage is confined hopelessly in an asylum?—Yes. I have found only one or two exceptions where we have dealt with cases where one or other of the parties is confined in an asylum. It is very rarely found that the person living at home has kept free from such an illicit union."

"36,629. Can you give any notion of the extent to which those cases have been brought before you? You say they are typical cases?—It is very difficult to speak in scores or hundreds, but in relation to the cases generally they are not a large proportion. The cases of insanity are not large in proportion to the general number of cases. I should not like it taken, as we had 52,670 cases last year, that a large number related to people who were in asylums."

"36,630. Are there enough, in your view, without getting exact figures, to justify an intervention on the ground that there is a substantial case?—I should say so, certainly. I considered that very carefully before putting it in my notes, and it occurred to me that the condition of things was such, and the proportion of cases such, that one was warranted in including that as a real reason."

60. It is material to refer to this, having regard to the suggestion by some of the witnesses, that, to afford further facilities for divorce, will lower the standard of morality, and respect for the sanctity of the marriage tie in this country. After a very careful consideration of all that has been brought before us, our conclusion is that the weight of the evidence which has been given before this Commission is to the contrary effect.

61. We can conceive nothing more likely to produce a sense of injustice and hardship, nor more calculated to bring the law into contempt among the people, nothing more inimical to the morality and the best interests of the country than that a system of judicature should remain unaltered which affords opportunity of redress to those who possess the means to use it, but by reason merely of cost and inconvenience, denies it to those who do not possess such means, and who from their surrounding circumstances, are necessarily more subject to the causes, which lead to matrimonial difficulties, and have less means of escape therefrom, without recourse to law, than their richer brethren. The principle, upon which a State should act, should be to enable all alike to obtain that justice, which the law recognises.

62. The weight of opinion is in favour of a reformed judicature and procedure, though there are differences of opinion as to the best method to be adopted. There is also a great weight of opinion in favour of a reform of the present laws, though there are differences of opinion as to the nature and extent of such reform. We shall deal with these questions more fully under the separate heads.

PART X.

QUESTION I.—SHOULD ANY, AND, IF ANY, WHAT COURTS HAVE JURISDICTION TO HEAR AND DETERMINE DIVORCE AND OTHER MATRIMONIAL CAUSES, AT ANY, AND, IF ANY, AT WHAT PLACES, IN ADDITION TO THE HIGH COURT SITTING IN LONDON?

63. The exercise by the High Court of its jurisdiction over divorce and other matrimonial cases is confined to London, although its jurisdiction in general common law and criminal cases is exercised all over the country at the assize towns. The jurisdiction of the county courts is fully shown in the Report of the County Courts Committee to the Lord Chancellor in 1909. It includes a limited jurisdiction in cases of contract and tort, with some few exceptions; a jurisdiction by consent of the parties to try any ordinary common law action without any limitation of amount; an equity jurisdiction in many matters where the estate or fund does not exceed 500*l.*; a limited jurisdiction in Admiralty cases, exercised by certain appointed county courts; jurisdiction under the Employers' Liability Act and the Workmen's Compensation Act; jurisdiction in Bankruptcy of a most extensive character, exercised by courts which are not excluded by the Lord Chancellor from having such jurisdiction; and jurisdiction in numerous other matters set out in detail in the said Report, to which we refer. That Report contains many suggestions for improving and developing the county court system, which have not yet been adopted, although a Bill for that purpose has been before Parliament. That Bill did not deal with the question of divorce.

64. Besides the High Court, with its civil and criminal jurisdiction, and the county courts, with their civil jurisdiction, there are the Courts of Chancery of the County Palatine of Lancaster, certain inferior courts, and the courts of quarter sessions, recorders, stipendiary magistrates, and justices, all exercising their functions locally; and the last two exercise the jurisdiction conferred by the Summary Jurisdiction (Married Women) Act, 1895, and the Licensing Act, 1902, more particularly hereafter dealt with. It will be found, therefore, that, except in the case of divorce, there are courts of which the poorer classes can avail themselves in practically all the emergencies of their lives, and which deal with all their debts, torts, and crimes. This exception is remarkable, for before 1857 such divorce as was obtainable, viz., *a mensâ et thoro*, could be proceeded for in the consistory courts. The cases were not numerous, owing to the cumbrous and costly nature of the proceedings.

65. As previously stated, power to hear cases of judicial separation and restitution of conjugal rights was given in 1857 to the judges of assize, but was taken away by an Act of the following year. From that date, until the Acts of 1878 and 1886, hereafter referred to (p. 66), matrimonial causes of all kinds had to be brought in the court in London; and with the exception of the orders which can be made under the Summary Jurisdiction (Married Women) Act, 1895 (which repealed the provisions of the Act of 1878 relating to this matter and the Act of 1886, and contained provisions modifying somewhat those in the said Acts), and the Licensing Act, 1902, the position remains the same: this is so not merely with regard to divorce cases, but with regard to cases for judicial separation, restitution of conjugal rights, and nullity of marriages, &c.

66. The following questions then arise:—

(1) Are the present means of administering the law such as to place the law beyond the reach of those who are in poor circumstances?

(2) Is there any substantial demand for reform?

(3) Is it desirable that changes should be made?

First Question.

67. With regard to the first question, we may quote the following passage from the said Report of the County Courts Committee:—

> "There is a close analogy between the state of things which still exists and that which existed before 1858. For there is still practically one law for those who can afford to bring a suit in the divorce court and another for those who cannot, and the latter embraces a very large portion of the population who cannot afford even the moderate expense of a suit in the present court. The cost of bringing or defending a suit in London and having the hearing there, renders

it quite impossible for many of the poorer classes to get the relief which those better off obtain. The great proportion of the cases are undefended, but proof of the facts before the judge is necessary; and even in these cases, poor people very frequently cannot find the money to commence and proceed with these suits and bring their witnesses from a distance to London, nor can they find the time or leave their employments for sufficient time, either to file their petitions in London, which practically they have to do themselves unless they have a solicitor, whom many of them are too poor to employ, or to attend a hearing in London. This is especially the case with parties who are at any substantial distance from London. Letters on this subject have been constantly received by the late President of the court from poor people urging reform in this matter, and protesting against the injustice to them of the present system. On the one side, people often cannot find the means to bring their suits at all, or only after saving up for years to do so. Many instances of this latter class come to the notice of the court. On the other hand, many persons cannot find the money or time to come up to London to defend themselves. And, further, as the husband usually has to find the means to enable the wife to defend herself or sue him, many cases are stayed because of his inability to do so, a state of things which may last for months or years, or never be overcome, and this even applies to cases where there is really no defence.

"Without doubt there is a practical denial of justice in this matter to numbers of people, and these are people who belong to ranks in life in which the relief to be obtained under the Divorce Acts is probably more necessary than in ranks above them."

68. The view expressed in that Report is entirely supported by a very large body of professional evidence which has been placed before us.

69. Mr. Alfred Musgrave, one of the Registrars of the Principal Probate and Divorce Registry, stated (60, 61) that the average minimum cost of an undefended London case would be about 40*l.* or 45*l.*; and (62, 63) that, when the witnesses came from Lancashire, these figures, he thought, would be as nearly as possible increased by 12*l.* or 13*l.* He gave instances of some cases, one an undefended case, where the witnesses who were few came from Yorkshire, some from Rotherham and some from Sheffield, and the costs were taxed at 56*l.* 2*s.* 1*d.*; another from London, costs taxed at 42*l.* 3*s.* 1*d.*; another from London, costs taxed at 46*l.* 16*s.* 1*d.*; a small case, in which the costs were taxed down to 28*l.* 16*s.* 8*d.*; and another where the witnesses were near London, and costs were taxed at 68*l.* 9*s.* 3*d.* (59, 80–3).

The costs in the ordinary class of defended cases, he said, vary from 70*l.* to 500*l.* (85, 86); court fees in an ordinary case he placed at not more than about 7*l.* (156). With regard to pauper cases he put in a list of pauper petitions filed in three years (Vol. I., p. 16).

Number of Pauper Petitions Filed.

—	By Solicitor.	In Person.	Total.
1907 - - - - -	51	4	55
1908 - - - - -	45	8	53
1909 - - - - -	58	8	66

He stated that a London undefended pauper case would, "if the witnesses are cheap witnesses," cost about 10*l.* (71), and that the cheapest undefended pauper case from Lancashire or Yorkshire would cost from 15*l.* to 20*l.* (127); and he gave a list (Vol. I., p. 16) of some cases of pauper expenses taxed in 1907, 1908, and 1909, in which the costs were from about 12*l.* to 21*l.*, and in the list are two cases in London costing respectively 4*l.* 10*s.* and 5*l.* 0*s.* 6*d.*, which are stated to have been the only two cases in three years of taxed expenses of paupers suing in person; and one of 5*l.* 0*s.* 10*d.* from Lincolnshire with no explanation; we should gather that the pauper in this latter case must have conducted the case, and that his witnesses must have been in London.

70. The costs mentioned by Mr. Registrar Musgrave are the taxed costs, as he only knew the result of taxation where bills came before him as taxing master (53); there would generally be costs and expenses in excess of taxed costs. The figures show a

cost, in ordinary cases, altogether beyond the means of a working man except in the rare cases in which he can obtain considerable assistance from friends, or save up money for years. It must be remembered too that the position in these cases is not like that of ordinary litigation, where two separate sides have to incur costs. In these cases, the man has to find the means for both sides. He has to secure his wife's costs in any case which she brings or defends, unless she has separate estate, which, among the poorer classes, is so rare that it may be left out of account. The burden of this is so great that male petitioners are often unable to pursue the proceedings, which are stayed until means for the defence are found, and, if the husband is defender, and has a difficulty in providing the security for his wife's costs of hearing, a motion to commit him can be made.

71. The position is serious enough in London cases. It is still more so in country cases, where the local solicitor has to employ a London agent, and the parties and witnesses must travel up to London and often stay over night, or, if a case lasts more than a day, more nights than one.

Take, for instance, a case from Newcastle-on-Tyne: a return ticket to London, third class, costs 2*l.* 5*s.* 3*d.* If, in an undefended case, the petitioner (who must be called save in very exceptional cases), his solicitor or a clerk, and, say, three witnesses are called from Newcastle, the fares alone amount to 11*l.* 6*s.* 3*d.*, and there are expenses for a night. There are simple cases in which only one witness, besides the petitioner, is required, but there are others in which more than three may be needed. There are also many cases in which a doctor, clergyman, or other official has to attend. The expense and inconvenience are especially great in the case of medical evidence.

In many cases, the railway fares are, of course, smaller than from Newcastle; but sufficient has been said to call attention to the difficulty caused by the mere travelling expenses, which may have to be found by the petitioner out of his weekly earnings or his savings. When the case is defended these expenses will have to be provided for both sides, as well as expenses in London dependent upon the length of the case, and of the cases before it in the list. Parties are often necessarily detained until their case is reached.

Although most divorce cases are undefended, there are many cases which might be defended if the cost could be provided, and in cases in which there is a defence, it is impossible for the poorer classes to bear the heavy expenses of attending trials in London, which may last for several days, and to provide the expense not only of themselves and witnesses, but of counsel and solicitors.

72. In addition to the question of actual cost, many witnesses pointed out that working people at a distance from London are at a great disadvantage in this, that they cannot easily get away from their work for a time sufficient to attend a hearing in London (more especially if the case is not disposed of on the day of their attendance), and that they are apt to lose their employment if they absent themselves. This is particularly the case with men and with women, who are wage earners; and, if they are defendants, the result may be that they remain away rather than run the risk of loss of employment. Similar considerations apply to witnesses from the labouring classes.

73. With regard to pauper causes, it will be noticed, from the statement above, how few of them there are, and how extremely few are in person. The table only gives petitions filed. It does not show how many were actually heard. From Mr. Registrar Musgrave's evidence it would appear that only about 15 per annum are heard (118). Of these petitions filed, some are stayed by applications for security, and some do not proceed by reason of expense. From the table of pauper expenses taxed (Vol. I., p. 16), it also appears how few pauper cases come up for taxation of costs, viz., four in 1907, four in 1908, and six in 1909.

In pauper suits at present the petitioner must obtain leave to proceed *in formâ pauperis* after counsel has advised that there is reasonable ground for proceeding, supporting the application by an affidavit of truth, and stating income (not exceeding 30*s.* to 32*s.* per week, though, in case of a wife suing, this limit may be extended to about 40*s.*), and no means above 25*l.* and clothing (77, 134–8, 187, 197); and a wife's affidavit must give similar particulars as to her husband. Applications to defend *in formâ pauperis* may be made by husband, wife, or co-respondent. No court fees are payable by a pauper (152–5), but neither counsel nor solicitor is assigned. In practice, pauper cases in the divorce court are usually conducted by counsel and

solicitor. In undefended cases a party sometimes manages to do it by himself or herself, but to do this, presence in London is necessary to file the petition, make the necessary applications, &c., and attend the hearing, and even if the parties can attend it is difficult to conduct their cases without legal assistance. The result is that they have to find some little money for their solicitor, and though solicitors are often good natured enough to assist them for nothing, we find that solicitors are naturally reluctant to take up these cases, and the small number brought before the court show that this procedure does not meet the needs of the poor.

Lastly, on this point of paupers, we may notice that a strong objection is felt by many who consider that their self respect is compromised if they are compelled to have recourse to pauper proceedings.

74. The evidence of Mr. Justice Bargrave Deane, given above (p. 37), upon the general question is important.

We do not think it necessary to refer to all the evidence as to cost which was given by many witnesses, but a few references will suffice to show the general accord with the statements made by Mr. Registrar Musgrave:—C. H. Pickstone (2557 *et seq.*); H. Gough (3196 *et seq.*); T. P. Griffithes (3390 *et seq.*) (partner in a firm having a large London agency business, who states (3612): "I think there is no doubt, " sir, that as far as the actual working classes are concerned, the present cost of divorce " is prohibitive"); T. Smith Curtis (4028 *et seq.*); Sir W. Cobbett (10,002 *et seq.*); Arthur Willey (10,154 *et seq.*); W. Simpson (11,317 *et seq.*); P. T Pearce (11,389); W. H. Winterbotham (President of the Law Society for 1910) (11,547–9); C. E. Longmore (requested by the Associated Provincial Law Societies to give evidence) (12,000–5); H. M. Lloyd (12,406); His Honour Judge J. V. Austin (12,641 *et seq.*, 12,793); W. H. Whitelock (13,070); F. F. Palmer (14,817 *et seq.*).

75. Apart from the witnesses on specific points, the evidence, from that of the Lord Chief Justice of England downwards, recognises that the present system is not satisfactory.

76. We may here notice how much England is behind some other countries in its provisions for pauper cases. We refer on this point to the evidence of Lord Salvesen (Vol. I., p. 251) and Mr. J. B. Lorimer (*ib.*, p. 277) with regard to Scotland, and to that of Dr. C. Neuhaus (Vol. III., p. 473), Monsieur Mesnil (*ib.*, p. 478) and Dr. W. R. Bisschop (*ib.*, p. 505) with regard to Germany, France, and The Netherlands respectively. Not only are the poor in these countries relieved either entirely or largely from expense, but they have in the last-named countries courts easily accessible all over the countries. This largely accounts for a far larger number of divorces in proportion to the respective populations in those countries than we find in England, and shows how fallacious it is to consider that a small number of divorces in England is indicative of a high state of morality in the country.

Monsieur Mesnil's figures showed more than 9,000 applications per annum to be placed on the poor roll in divorce cases, and the numbers of permissions and refusals. He also explained how it is that these figures are so large in France; we shall refer to his observations when we deal with the grounds of divorce later in this report.

77. We have come to the conclusion that beyond all doubt the present means of administering the law are such as to place it beyond the reach of the poor. One of the most striking features of the evidence of those familiar with the poorer classes is an almost unanimous opinion that they treat the law of divorce as a matter which is beyond their reach, and act as if it did not exist, with direct consequences of which it is lamentable to hear.

Second Question.

78. Is there any substantial demand for reform?

If there is to be a law of divorce, and if courts easily accessible for the purpose of administering it can be provided without difficulty, and if those courts are presided over by judges competent for the purpose, there can be neither justice nor common sense in not opening those courts to the suitor, who claims the benefit of that law, and cannot otherwise enforce his claim. If the present law be a law which ought to be repealed or altered, then it should be repealed or altered; but if it be and

remain the law of the land, or if that law be extended, everyone who needs it should have access to courts ready and able to administer the law, if given jurisdiction to do so.

79. The large body of evidence, which has been placed before us from all parts of the country, shows that there is a real need and widespread demand for reform. It is not to be expected that such demand would take the shape of public meetings to advocate reforms. The unfortunate people, who are sufferers from the present state of the law and its administration, are not numerous in proportion to the great body of the community, whose domestic lives are happy, prosperous, and contented, or at least bearable. The sufferers do not air their grievances on the house tops. The nature of these grievances is such that every effort is made, in most cases, to keep them from the eyes and ears of relatives, friends, and neighbours, until they become too hard to bear. The evidence of numerous witnesses, however, shows how this demand is manifested. We may specially refer to evidence from some of the representatives of the leading law societies in the country; to the evidence of certain of the county court judges, magistrates, and lawyers, and others; to evidence from gentlemen who have the management of certain societies for the aid of poor suitors; to the evidence of those who represent the societies for the prevention of cruelty to children; to the evidence from workers amongst the poor, and to that of several medical officers of health, and many others, including representatives or resolutions from certain of the Churches. Reference may also be made to the evidence as to Wales given by the Right Hon. Sir David Brynmor Jones, K.C., M.P. (Vol. III., 43,137 *et seq.*).

We have also received a large number of letters from all parts of the country giving particulars of cases pressing for reform. Specimens of these sufficient to illustrate the nature of the complaints and demands made by the writers will be found in Appendix XXVI., pp. 172 *et seq.*

80. As against this body of evidence coming from those who speak from experience and from contact with persons whose matrimonial difficulties have been brought before them, we have had evidence from certain witnesses, of whom the principal appear to be those representing the Society of the Mothers' Union—the Hon. Mrs. Evelyn Hubbard, vice-president, and Mrs. E. Steinthal, Ripon diocesan honorary secretary of the Union, and Mrs. Church, a worker therein. The objects and principle of the Union, as stated in the evidence of the first-named witness, are:—

> "(1) To uphold the sanctity of marriage. (2) To awaken in mothers of all classes a sense of their great responsibility as mothers in the training of their boys and girls (the future fathers and mothers of the Empire). (3) To organise in every place a band of mothers who will unite in prayer, and seek by their own example to lead their families in purity and holiness of life. The Mothers' Union is a Church of England society, founded on the Bible, and on the Prayer Book as proved by the Bible, and is under the patronage of the Archbishops and Bishops, and works on Church lines. All married women are welcomed as members, except (1) those who are violating the sanctity of marriage by breaking their marriage vow; (2) those who deny the divinity of our Lord Jesus Christ; (3) those mothers who neglect to bring their children to Holy Baptism; (4) those who are notorious evildoers."

These witnesses suggest either that there is no demand, or a very limited demand, for reform. But their experience seems to have been chiefly amongst those who have not been sufferers from matrimonial trouble, and their views appear to be affected by the ecclesiastical aspect of the question of divorce, and by their connection with those who hold views on religious grounds as to the indissolubility of marriage.

A circular was sent round by the Union to its members for signature in the following terms:—

> "*Protest.*
>
> "I desire to add my earnest protest against the extension of facilities for divorce. I believe that to cheapen or extend the grounds of divorce would be against the moral and social interests of rich and poor alike, and would encourage the seeking of divorce for trivial reasons.
>
> Signatures..... .....
>
> Collected by.....
>
> "N.B.—No one should sign one of these papers more than once."

Protests in this form were handed in by the Hon. Mrs. Evelyn Hubbard, who stated that they were signed by about 21,389 women, presumably members of the Church of England (16,910–1). But as against proposals that divorce should be granted for "trivial reasons," many people who approve of reform might be ready to sign protests.

Resolutions were also passed at various meetings of the said Union in the following terms :—

"*Resolution.*

"The members and associates present earnestly protest against any extension of the facilities or grounds for obtaining divorce, believing that any such extension would lower the ideal of marriage in the minds of the people, and injure the home life of the country.

Number present.....

Parish.....

Diocese.....

Name of Branch Secretary or Enrolling Member.....

Date....."

The aforesaid resolutions were handed in by Mrs. Steinthal, who stated that the number of votes in support of them collected at different meetings of respectable working women, mothers, amounted to 85,491 (17,071–85). Mrs. Steinthal also handed in two books entitled "Memoranda of Evidence collected by the Mothers' Union from Officials, &c.," and the details thereof are given in Vol. II., pp. 196 to 203. They show considerable differences of opinion among those from whom the returns were obtained, the great majority, however, considering that there is either no demand, or no widespread demand, for facilities for divorce. At the same time, they disclose a very low state of morality amongst the poor, and bear witness to the widespread ignorance of their legal rights, which exists on the part of the poor, and to the extent to which separation orders conduce to immorality.

Protests were also sent to the Commissioners signed by over 2,000 members of the Church of England Women's Help Society against the extension of facilities for divorce. A specimen copy of this protest will be found in Appendix XXV. B., p. 162.

Copies of other resolutions, most of which were passed at clerical meetings, against extension of such facilities which have been received by the Commissioners will be found in Appendix XXV. C., pp. 162–7.

We also refer to the evidence of, amongst others, Thomas Holmes, Secretary of the Howard Association (17,705), J. C. Holmes (18,361), W. Lightfoot (18,508), H. F. Pike (18,617), F. W. Barnett (19,224), C. Wright (19,326–7), J. Massey (19,408), W. Fitzsimmons (19,556), H. Goldstone (20,860), Rev. H. G. Jones (20,931). With regard to this class of evidence the observation made by Mr. Fitzsimmons is weighty :—

"It is not so much a question of demand. I think the poor should not be denied the benefit of any law by reason of poverty. Respecting the question as to whether there is any demand for it, it ought to be remembered that the poor have known that the question of divorce was so far out of their reach that the idea of asking for the thing never occurred to them."

We further refer to the evidence of the Rev. E. S. G. Savile, who handed in protests and resolutions from various branches of the Church of England Men's Society. He stated that the total number of members, who have signed their names, is 11,352, and those, who have sent in unsigned petitions, represent 17,715, making a total of 29,067. The effect of these protests and resolutions is so fully given in the evidence of Mr. Savile, the secretary of the society, in Vol. III., pp. 324–8, that we have not thought it necessary to print copies of them in the Appendices. They are opposed to any extension of facilities, and many of them are in favour of a repeal of the Act of 1857. Some are in favour of the equality of the sexes, and some are in favour of prohibiting the reporting of details of divorce cases.

We also refer to the evidence of Mr. Hill on behalf of the English Church Union (40,293 *et seq.*).

81. Our conclusion is that this second question should be answered in the affirmative, viz., that there is a substantial demand for reform.

Third Question.

82. Is it desirable that changes should be made?

Two main aspects of the subject of reform in the administration of the law must strike anyone, who examines the evidence before the Commission. The first is that in accordance with the whole movement of the epoch in which we live, whatever remedies for legal wrongs are within the reach of the well-to-do should be placed by the State within the reach of the poorest in the land, so far as it is reasonably possible to do so. It is said that the poor can never be placed in a position to bring their grievances before the High Court with expensive counsel and solicitors, and can never be placed before the law in the same position as those possessed of means, and that, therefore, there must always practically remain one law for the rich and one for the poor; and it is said that to maintain a High Court in London for these cases and to establish local courts with limited jurisdiction would be to maintain the distinction. But these suggestions are not sound. When people have the means they will naturally employ every means in litigation which their money enables them to take, and when they have little means they may have to be content with less expensive litigation, but none the less the State should provide tribunals suitable to their means. This is done in respect of all litigation except divorce.

83. The second aspect of the subject which the evidence brings into prominence is the greater need of the poor with regard to divorce than the rich. As already pointed out, the latter have far more power than the former of mitigating the hardships and miseries which are inflicted upon them by the destruction of a matrimonial home through misconduct of one of the parties. The labouring man is under exceptional disadvantages in this respect. His house is small, he is at work all day; he has no one but his wife to look after his home and children. If she prove unfaithful to him and leave him, or is judicially separated from him, the man is driven to find some woman to look after his house and children, and he takes a housekeeper. The witnesses show how the want of adequate separate sleeping accommodation almost inevitably leads to the formation of a connection of an illegitimate character, and under the present condition of things a man so situated cannot place himself in the position of being able to form a new regular union.

84. Again, in the case of a woman of the same class, if her husband prove unfaithful to her, or desert her, and she be separated from him, she is left without any means of support for herself and children, except an inadequate maintenance ordered by the magistrates or justices which is often not recoverable. We have already pointed out how her circumstances, her slender means, her very efforts to increase them by taking in a lodger in a small house all expose her to temptation, with often disastrous consequences, which might be avoided had she had the means of freeing herself from her former tie.

Take again the case where husband or wife, as the case may be, deserts his or her spouse and emigrates to the United States or the colonies, a class of case of everyday occurrence. Probably in almost every case the emigrant either takes a companion, or finds one in a new country, and sets up a new home. The person left behind will often be found after a time living with someone else. Under the circumstances in which they live, and given the natural tendencies even of the most moral of human beings, the consequences described will frequently happen.

85. We are of opinion that the administration of the law should be reformed.

REMEDIES SUGGESTED AND COMMENTS THEREON.

86. Suggestions of remedy come from all (with few exceptions) but those who maintain on scriptural grounds that there should be no divorce, and that, however regrettable it may be, innocent people must, on these grounds and in the general interests of the community, be left to suffer from the hardships and miseries, which result through no fault of their own from unfortunate marriages.

87. The suggestions for remedial legislation are various, and may be thus stated:—

(*a*) That there should be trial at assizes.
(*b*) That there should be trial by a judge of the Probate, Divorce, and Admiralty Division, proceeding round the country.
(*c*) That there should be trial before a registrar of that division, proceeding to the locality.
(*d*) That all the cases should be still heard in London, but that the cost of witnesses, in poor cases, should be provided at the public expense.
(*e*) That evidence should be taken by affidavit or otherwise locally, and the decision pronounced in London.
(*f*) That courts of summary jurisdiction should have divorce jurisdiction.
(*g*) That the county courts should have divorce jurisdiction.

88. We take these in their order. But we first make this general objection to most of them that their adoption will not enable the scheme to be carried out, which we propose hereafter with regard to limiting the powers of courts of summary jurisdiction and for affording opportunity for applications for permanent separation orders, &c. to be made promptly and conveniently to the High Court sitting locally. This will be more fully appreciated when our further recommendations are considered.

89. (*a*) *Assizes.*—This suggestion was supported by the Bar Council, whose views and suggestions were presented by Mr. W. English Harrison, K.C., chairman of the General Council of the Bar (Vol., I. p. 464 *et seq.*), and by some other witnesses who dealt with this branch of the subject. It was not approved by most of the witnesses from the other branch of the legal profession, nor by some members of the Bar practising in the Divorce Division. There are several important objections to its adoption.

(1) The assizes are not held with sufficient frequency to meet the necessity for dealing with matrimonial cases with promptitude. The position produced by the break-up of a home should be dealt with at once.

(2) There is considerable objection to matrimonial cases, especially small cases where cost and convenience are of moment, being introduced into an assize list, having regard to the uncertainty of its duration and of the time when cases will be reached, especially where one assize judge has both criminal and civil work to dispose of. Criminal work is almost invariably taken first at such an assize, and both criminal and civil work are of uncertain duration.

(3) There have been complaints as to the present system of assizes, which we need not enter into in detail, but it would not add to the easy disposal of business already sufficiently difficult, to increase the lists by adding divorce cases. A table is given at p. 58 *et seq.*, showing the places where assizes are held and the annual number of assizes for civil business at each place.

(4) The costs at the assizes would be much the same as in London, except for the travelling expenses, and far more than the costs in the county court. A good deal of evidence was given on this point, but we may illustrate it from the evidence of Mr. Frederick Walter Dendy, who is District Registrar of the High Court at Newcastle-on-Tyne and Registrar of the county court at that place:

> "2999. Will you just give us those figures? I do not know whether they lead to definite conclusions?—In the 11 years in which I have acted as district registrar of the High Court I have taxed the bill of costs of the successful party in 77 assize actions, which were Newcastle district registry cases tried either at Newcastle-on-Tyne or at some adjacent assize town. The average amount of the costs as taxed in each of these 77 assize actions has been 108*l.* 5*s.* 10*d.*, roughly speaking 100*l.* The highest bill as taxed by me was 320*l.* 7*s.* 10*d.*, and the lowest was 36*l.* 9*s.* 8*d.* During the five years that have elapsed since the County Courts Act of 1903, extending the jurisdiction of the county court to cases over 50*l.*, has been in operation, I have as registrar at the county court taxed the costs of the successful party in 47 actions tried at Newcastle under the extended jurisdiction. The average costs of those actions was 30*l.* as against 100*l.* The highest of those bills was 106*l.* as against 326*l.*, and the lowest was 8*l.* 14*s.* 6*d.* as against 36*l.* 9*s.* 8*d.* I would like to point out the curious result, that not only is the average just under one-third, but the highest is just under one-third, and the lowest is just under one-third, and therefore, I think, you may say, from my experience in that

particular district, the cost of an extended jurisdiction action in the county court is just under one-third of an assize action trial."

"3000. Were those assize actions all of larger calibre, larger matters which would require more expense?—No. On the whole they were larger, in point of fact. I do not think you can estimate the size of an action entirely by the amount claimed, and, moreover, a good many of them were only tried at the assizes, because slander and libel are excluded from the jurisdiction of the county court."

The witness was apparently dealing with the present system of procedure taxed on two different scales, the High Court and County Court, and, if a simpler procedure were applied in the High Court, the costs would be diminished.

(5) There would be no judge in the locality, between the assizes, to whom interlocutory applications could be made, *e.g.*, applications as to custody of children.

(6) The judges of assize are all the King's Bench judges, and include those who may be Roman Catholics, or do not desire to exercise divorce jurisdiction. This point does not seem to have been sufficiently appreciated by those who advocate trial of these cases at assizes.

For reasons, which appear hereafter, we do not propose that the heavier cases should be heard out of London, and it does not seem desirable that the assize judges should be burdened with a number of small divorce cases, which might more conveniently be disposed of before another tribunal.

90. (*b*) *Judge of the Probate, Divorce, and Admiralty Division proceeding round the country.*—The objections to assizes (other than No. 6 above) apply with equal force; and, moreover, the two judges of the Divorce Division have their time fully occupied in London with Divorce, Probate, and Admiralty work. Even if one of them could be spared for country work, he could not give adequate sittings all over the country. It would be found that his whole time was taken up, and that long intervals would take place before he could visit the same place again. Moreover, this plan would be to institute a sort of High Court assize with all the state and expense attending the sitting of a High Court judge at assizes.

This suggestion, which comes principally from those associated with the present court, we consider impracticable.

91. (*c*) *Registrars of the Divorce Division.*—This suggestion was only faintly made and is open to similar objections. These officers have work which occupies their whole time, and, moreover, their experience is not such as to qualify them for trying cases.

92. (*d*) *Providing expenses for trial in London.*—This suggestion would permit of the proceedings being carried on in the district registries, or even in the county courts, until hearing, but the trials would take place in London, and the expenses to the parties of bringing their witnesses up to town would be borne by the State, or possibly by the locality, in cases of necessity. The suggestion, in one form or another, met with the approval of the Lord Chief Justice, Lord Mersey (Sir John Bigham), and others. We, however, cannot recommend it for acceptance.

(1) In the first place, we think it would be reasonably asked—by the Treasury, on behalf of the taxpayers, or by the local authority, on behalf of the ratepayers—why should the country or the locality pay for the cost of parties and witnesses coming up to London, possibly on both sides of a case, when tribunals can be provided at their doors, ready and competent to dispose of the cases? Such a question contains its own answer. Moreover, we fear that the suggestion, if adopted, might lead to abuse.

(2) Further, the provision of the expenses of witnesses would not, in our opinion, meet all the extra expenses of bringing interlocutory proceedings, which require a judge's consideration, before the judge in London, and of the employment of London agents for such work as had to be done in London.

(3) We also think that the suggestion does not cope with the difficulties, dwelt upon by so many witnesses, in which labouring men and women are placed, if they have to be absent from their locality for any substantial time. This applies with equal force to witnesses who come from the same class of life as the parties, and with strong force to such persons as doctors, and anyone holding an official position, and the solicitors in the cases.

If, for example, there were in Liverpool a court competent to hear an undefended case of a simple character, which would take not more than a quarter of an hour to dispose of (and this is generally the case with undefended cases, of which about 20 a day are disposed of in one court: by far the largest proportion of cases are undefended) it would seem an unnecessary and unreasonable course to send everyone concerned up to London. Yet this is the course followed at present in cases from all over the country to the great inconvenience of the solicitors, parties, and witnesses in the undefended cases, nearly 600, annually heard.

93. (*e*) *Taking Evidence by Affidavit or otherwise locally and deciding the case in London.*—It is essential in our opinion that the judge who decides the case should see the witnesses. There are already powers which enable the court to allow facts to be proved by affidavit or before an examiner in special circumstances, and we do not recommend their extension. This suggestion received no substantial support, and we cannot recommend its adoption.

94. (*f*) *Courts of Summary Jurisdiction.*—The suggestion that these courts should have divorce jurisdiction comes from those whose experience is chiefly derived from those courts, and who are possibly apt to take an exaggerated view of the capacities and importance of such courts. We do not believe that this suggestion will meet with any general approval, and we are unable to recommend its adoption, whether the court consists of a stipendiary magistrate, or of two or more justices of the peace; and, indeed, we propose certain limitations upon the powers at present possessed by such courts, which will be stated under Questions III. and IV. (pp. 66 and 70). Such courts are not suitable for the exercise of divorce jurisdiction; their staffs, as a rule, are not sufficient for divorce procedure and have little or no experience in civil business, their procedure is summary, and, partly by reason of this and partly by reason of their cheapness, they are resorted to by the poorer classes, with little previous consideration or reflection. In addition, so far as stipendiary magistrates are concerned, at any rate outside the metropolitan area in which may be included East and West Ham, there are too few to be of much assistance. There are only 19 outside the metropolitan area and those are stationed in eight counties, so that there is a large part of England and Wales without any stipendiary magistrate. As to other courts of summary jurisdiction, the gentlemen, who constitute them, change from week to week, and are, for the most part, without legal training.

We think, too, it is desirable, if courts of summary jurisdiction retain any powers of granting separation orders, that the jurisdiction in divorce should be exercised by a different tribunal from that granting separation orders.

95. (*g*) *County Courts.*—The suggestion that these courts should have divorce jurisdiction is supported by an influential body of evidence. In its favour will be found many witnesses of experience. On 3rd May, 1910, the Association of County Court Registrars passed a resolution "that in the event of jurisdiction in divorce "being extended, it should be conferred on county courts," (Vol. II., p. 370.) The suggestion is favoured by most of the large body of solicitors, who have experience of the working of all branches of the courts. It is thus favoured, because of the great convenience which these courts afford to suitors, owing to the sittings being held at a large number of places throughout the country, also because the procedure is speedy, simple, and economical, and generally because these witnesses consider that these courts are suited to the needs of those who resort to them, and are competent to deal with the suggested additional jurisdiction.

96. On the other hand, there are objectors to this suggestion. Their main grounds are that divorce ought not to be made too easy, and that to give the county courts jurisdiction would have this effect; that uniformity of decision is desirable, and would not be obtained, if the jurisdiction were entrusted to the county court judges, who number 55; and that there would be more opportunity for collusion, than if the trial of cases were confined to London. We proceed to consider these objections.

97. The phrase "divorce should not be made too easy" was not infrequently used before us, and it is necessary to understand exactly what it means. If it means that proceedings in divorce should not be too cheap, we agree that the claim to

a divorce must be treated as a very serious matter, and should not be made the subject of summary jurisdiction, originating with a summons costing, say, 2*s.* and ending with a hearing, the fee for which is another 2*s.*, like a summons, say, for maintenance before a magistrate. Such a procedure would lead to hasty and ill-considered applications, as is the case with applications to the magistrates and justices. But, if the expression means that the cost of divorce proceedings is not to be reduced so as to enable the poorer classes to bring their cases before the court in a reasonable and satisfactory manner and with due deliberation, the objection simply means that the administration of the law will remain the privilege of those with means to proceed in London. The poor would continue to be excluded from the benefit of the law, as indeed some maintain they ought to be, on grounds with which we have dealt elsewhere. The expression is by some, perhaps, intended to refer to alterations as to the grounds of divorce. These we deal with under Question VI. (p. 90). At present we are considering administration of the law, whatever the law may be.

98. Next, with regard to want of uniformity of decision—some practitioners in divorce cases appear to consider the divorce law one of great difficulty. It is perhaps not unnatural that those, who are closely connected with any particular professional practice, should over-estimate its difficulty. But, in the administration of the divorce law, the great mass of the work is the settlement of pure issues of fact, *e.g.*, whether there has been adultery or cruelty, or desertion. A perusal of the reports of cases in the courts will show that there are only occasionally difficult questions of law, as, for instance, those which depend on some branch of international law, or the extent of the court's jurisdiction, or matters subsequent to decree, such as variation of settlements. The Law Reports show that the matrimonial cases in the Court of Appeal in a year are few, and are almost entirely on legal points, such as those just mentioned.

The only difficulty, with regard to want of uniformity, to which witnesses seemed to attach real importance, was in connection with the term cruelty. We consider this term more fully under Questions III. and VI. (pp. 66 and 90), and here only observe that, if there be any difficulty under this head, it may be avoided by a clear statutory definition; that any tendency to strain the term, either by the court or by a jury, arises principally in cases where adultery is established and cruelty has also to be made out in order to found a decree of divorce; and that the abolition of the necessity for coupling any other cause with adultery would largely eliminate this tendency.

With regard to the suggestion of want of uniformity, it is to be observed that the Legislature has already entrusted the decision of charges of persistent cruelty, desertion, and even adultery as a defence, to the courts of summary jurisdiction, where there is a far larger field for want of uniformity than in the county courts. It is also to be observed that there would always be the right of appeal. Further, if this point should be thought to have the importance which the objectors, including the Bar Council, attach to it, we think it will be satisfactorily met by the proposals which we make as to the courts by which divorce jurisdiction should be administered.

99. The fear of collusion evidently bulks largely in the minds of many of the witnesses with regard to the cases brought before the divorce court, but the Earl of Desart, who was for nearly 15 years King's Proctor, stated (15,906) that he did not think that there is any objection to county courts from the King's Proctor's point of view, and the facts proved by him show that there is a great deal of exaggeration in this matter, as appears from the following passage in his evidence :—

> "15,995. (*Chairman.*) Are you able to tell us what proportion the cases in which you intervened on the ground of collusion alone bore to the cases in which you have intervened on the ground of misconduct on the part of the petitioner?—I could not give you it in the way you ask, but cases of collusion are very few—one or two a year. I could not tell you how many of the others."
>
> "15,996. The great cause for intervention is you find concealment on the part of the petitioner of his misconduct?—No, most of the collusion cases."
>
> "15,997. I was not on collusion. Is it the case that most of the cases are on the ground of misconduct of the petitioner which is kept back from the court?—That is the ordinary case."
>
> "15,998. Do you think that the cases of collusion between the parties are very numerous, if you have only had one or two in a year?—It is very speculative. We have a good many cases in which we suspect collusion and get no evidence, but our suspicions may be ill-founded. There is no doubt a certain proportion of cases in which collusion is suspected."

"15,999. Would one or two cases suggest much collusion?—That is about it. I think it works out hardly more than two. There might be three one year and one in another."

"16,000. In which collusion has taken place and you have intervened?—Yes."

"16,001. What is about the total interventions per annum, roughly?—I can give it to you in a minute. It varies in the last 10 years from 11, the lowest, to 33, the highest."

"16,002. The total number of interventions altogether is not very large?—No, but we inquire into an enormous number of cases; it varies from 306 to 631, but the actual interventions vary from 11 to 34 a year."

"16,003. In what number of years?—Fifteen years."

The figures given in the Civil Judicial Statistics for 1908, 1909, and 1910, pp. 27, 31, and 29 respectively, are as follows:—

Number of Decrees Nisi granted.

	Annual Average.			Intervention by Queen's (and since 1901 King's) Proctor.	Decrees reversed.
1858–1861.	Husbands petitions	86·25	141·25	1·25	·75
	Wives "	55·00			
1862–1866.	Husbands "	95·2	154·4	4·0	3·2
	Wives "	59·2			
1867–1871.	Husbands "	101·0	179·0	8·4	5·6
	Wives "	78·0			
1872–1876.	Husbands "	152·4	261·8	10·8	8·4
	Wives "	109·4			
1877–1881.	Husbands "	188·0	328·8	7·6	6·8
	Wives "	140·8			
1882–1886.	Husbands "	201·2	349·2	22·6	18·2
	Wives "	148·0			
*1884–1888.	Husbands "	208·2	364·4	24·4	19·0
	Wives "	156·2			
1889–1893.	Husbands "	210·6	365·6	24·0	21·6
	Wives "	155·0			
1894–1898.	Husbands "	—	472·8	17·4	14·2
	Wives "	—			
1899–1903.	Husbands "	351·0	568·4	21·0	17·2
	Wives "	217·4			
1904–1908.	Husbands "	354·6	635·4	27·6	24·2
	Wives "	280·8			
1905–1909.	Husbands "	360·6	645·6	27·4	24·4
	Wives "	285·0			
1906–1910.	Husbands "	349·6	638·6	25·8	23·4
	Wives "	289·0			

* The want of sequence in the figures arises from the comparative tables in the Statistics having been prepared at different times.

Note.—The highest was in 1903, viz., 35.

The following figures give the population of England and Wales at intervals of 10 years since 1861:—

1861	20,066,224
1871	22,712,266
1881	25,974,439
1891	29,001,018
1901	32,526,075
1911	36,075,269

We may add that collusion is held to exist where the initiation of a suit for the dissolution of marriage is procured, or its conduct provided for, by agreement or bargain between the spouses or their agents. The mere fact that both spouses desire a divorce does not make them guilty of collusion, provided that they have not entered into any agreement obnoxious to the court; and collusion does not prevent a fresh suit (free from collusion) being afterwards brought.

100. We surmise that what is understood popularly by "collusion" is where the petitioner keeps back some fact which, if disclosed, would afford an answer to the petition. There seem to be more of these cases than there are of collusion in its proper sense, but even these are not numerous, and it is of great importance to bear in mind that concealment of facts is affected by the present state of the law under which the judge has not an adequate discretion in dealing with the facts of each case. If the law were placed upon a more reasonable footing as regards grounds of divorce and reasons for refusing it, there would not be the same temptation to conceal facts as there is now. If the law be too harsh, some people will not scruple to deceive the court, in order to be relieved from bondage.

101. We think it desirable to point out that concealment of the petitioner's own misconduct is assisted by the retention of section 3 of the Evidence Further Amendment Act, 1869 (32 & 33 Vict. c. 68), that the petitioner cannot be required to answer any questions tending to show that he or she has been guilty of adultery, unless they have denied it; naturally, in proving a case against a respondent, nothing is said by the petitioner as to his or her own misconduct. This provision appears to have originated from the general principle that a person is not bound to answer questions which tend to incriminate himself or herself, and to have been handed down from days when adultery was a ground for excommunication. Excommunication and its consequences have now become mere matters of history, and adultery is not a criminal offence. The provision aforesaid should be abolished.

102. It seems probable that cases of actual agreement are extremely rare among the poor, and that, with regard to those in better circumstances, the cases in which there is any material likelihood of collusion by agreement probably arise in connection with the Act of 1884, which enables a party to prove desertion equivalent to two years' desertion by obtaining a decree of restitution of conjugal rights. This process is largely used where a husband has been guilty of adultery. His wife, notwithstanding this, writes a letter requiring his return, which he answers with a refusal, and thereupon she proceeds to enforce a suit of restitution, and on non-compliance with the decree she can proceed to obtain a divorce on the grounds of adultery and desertion (*see* the evidence of the late Sir George Lewis, 1444–52). If the sexes were on an equal footing, the first process would be unnecessary. We shall deal with this Act in considering amendments of the law.

103. We may further observe that the likelihood of collusion escaping detection if cases were heard locally, and not in London only, would be less in the case of local trials than it is at present, for the following reasons. The judge who hears a case has little or no opportunity of fully investigating it, where, as in undefended cases, only one side is heard. The petitioner often discloses nothing against himself or herself to his or her advisers, and only the case which has to be proved against the other side is presented. In very rare cases something in the documents or otherwise may arouse the suspicions of the judge, and he then may, if he think fit, direct that the attention of the King's Proctor be called to the case. The officials of the court have no means of knowing anything about the cases, especially those which come from the country. The King's Proctor does not watch the actual proceedings in London, but derives his information from inquiries made afterwards, often from communications addressed to him about the cases. If a procedure similar to that of the county courts were adopted, the position with regard to local hearings would be more favourable to detection of collusion or concealment than in the High Court in London. The proceedings in the former are usually served and attended to by the bailiffs of the court who have districts to look after, and, in order to appreciate the remarkable knowledge of these officials of their districts and the circumstances and conduct of the people who are parties to litigation, it is only necessary to attend sittings of county courts where judgment summonses are being taken. There would be little difficulty in these officials inquiring into the position and conduct of the parties to every divorce case in their locality, and reporting thereon to the court before or at the hearing. We may refer to the evidence of Mr. C. J. R. Tijou, the representative of the High Bailiffs' Association (2502–11, 2539–42), and Mr. G. A. Lightfoot (17,514).

104. We pass on to consider a further objection to the county courts, viz., that these courts are already sufficiently burdened with work, and that their work is increasing. Even if this is so, and if, on other grounds, it is desirable that such courts should have divorce jurisdiction, then clearly this point only indicates that an increase of staff may be necessary. But at present it is impossible to estimate whether the number of divorce cases would be such as to add very materially to the present duties of the courts, when such cases are divided amongst a number of judges. We think that the scheme which we propose affords means of sufficiently increasing the judicial force for the time being. When the number of additional cases is ascertained, the arrangements can be made more permanent without necessarily requiring further legislation, if adequate provision be made from the commencement for such appointments, whether temporary or permanent, as may prove necessary.

105. We consider that the principal objections made to the county courts having jurisdiction cannot be reasonably sustained, but there are certain grounds of objection which we think deserve to be taken into account.

106. In the first place, the difficulty of all the county court judges exercising divorce jurisdiction is greater, in consequence of greater numbers, than of all the King's Bench judges exercising such jurisdiction—some may be Roman Catholics or have objections to divorce.

Secondly, the gravity of divorce and other matrimonial cases, affecting as they do the family life, the status of the parties, the interests of their children, and the interest of the State in the moral and social well-being of its citizens, makes it desirable to provide, if possible, that, even for the poorest persons, these cases should be determined by the superior courts of the country assisted by the attendance of the Bar, which we regard as of high importance in divorce and matrimonial cases, both in the interests of the parties and in the public interest.

Thirdly, it is to be borne in mind that the county courts were originally established for the recovery of small debts, which still forms a considerable part of their work, though they have since been entrusted from time to time with multifarious duties, many of which are of an important character.

The general impression produced upon us by the evidence is that, although little importance need be attached to the suggestion that the poor would resent having their divorce cases heard in these courts, it would, in the estimation of a considerable section of the community, tend to a higher regard for the procedure and decision if those cases were before the highest tribunal—the High Court (*see* 14,416).

Fourthly, the constitution of county courts is not such as to make them in all respects suitable for the exercise of a jurisdiction, which is not confined to parties resident in this country. Their powers do not extend, and it is not reasonable that the powers of inferior courts should extend, to the issue of their process for service abroad. In divorce cases, especially, is this service needed. The cases are numerous, in which a married man or woman has departed from the country, and taken up residence in a colony or elsewhere abroad. There is no power at present for such courts to obtain evidence from abroad, which is frequently required even in very poor cases. This might be conferred, as was proposed by the Lord Chancellor's Committee, by the indirect means of an order of the High Court for the purpose, but it seems more suitable that the whole proceedings should, if possible, be in the High Court.

107. Apart from these details, it has to be remembered that frequently divorce cases involve the status of foreigners, who may have married either in this country or abroad, and are domiciled in this country. This is frequent where the cases arise between parties residing in London, or one of the other large cities to which foreigners resort. Jurisdiction, both in divorce and nullity cases, is not infrequently concerned with private international law, and, as decrees may have their effect in other countries, as a general principle they should be made by the High Court of the country of the suit.

108. The result is that, to meet the difficulties which arise in small cases from the cost and inconvenience of confining divorce and other matrimonial jurisdiction to a court in London, and also to meet any objections which may be made as to the exercise of this jurisdiction by an inferior court, it is important that the High Court should exercise this jurisdiction locally by judges of experience in the subject, with a simple, inexpensive and speedy procedure.

If district courts of the High Court were to be established, as has been frequently advocated by some law reformers, the problem might possibly be solved if the cost of

proceedings could be lessened, but this course has been objected to and has not been adopted. So long as the circuit system is maintained, district courts of the High Court will probably not be established.

Conclusion in favour of the High Court sitting and exercising Jurisdiction locally.

109. We have arrived after much deliberation at the conclusion that the problem may be solved in another way, by a combination of the High Court jurisdiction with the county court procedure, and we recommend that that course be adopted.

According to section 16 of the County Courts Act, 1888, any county court judge may be appointed a Commissioner of Assize, that is to say, at present any county court judge may be entrusted with High Court jurisdiction.

The objections to the county courts entertained by some very important witnesses, for instance, the Lord Chief Justice (15,501), Mr. Justice Bargrave Deane (1203–4), and by the Bar Council (11,968) would, as we understand their evidence, be minimised, if the jurisdiction were to be exercised by a limited number of county court judges, selected for the purpose. We refer especially on this point to the evidence of Lord Desart (16,008–14).

Since the Judicature Acts there have been established, at 89 convenient places in England and Wales, High Court registries in which common law actions may be brought, without the necessity for the interlocutory proceedings being in London.

In all these registries, with the exception, as we understand, of those at Liverpool, Manchester, Preston, and Ipswich, the same person is High Court district registrar and county court registrar; and this is of considerable importance in the working of a scheme which involves High Court jurisdiction with the assistance in service of proceedings and enforcement of process of officers of the county court. In the four places mentioned as exceptions, it will not be difficult to make special arrangements.

There are also registries of the Probate Division of the High Court at 40 places with different officials (except in two or three instances) from those in the High Court registries, but their duties are chiefly of an administrative order not concerned with litigation, and we therefore do not include them in these proposals.

110. We think that the country should be apportioned into districts, which might correspond with the present circuits of the High Court, and a metropolitan district, subject to such modifications as might prove convenient. Each of these districts would embrace several county court circuits. For each of these districts or combination of districts, we suggest the selection and appointment by the Lord Chancellor of one of the county court judges as a Commissioner in divorce and matrimonial cases, for, say, a year at a time, or more permanently, when the amount of work to be done has been ascertained; or the selection and appointment as such Commissioner of any person qualified to be a Commissioner of assize, so that, if necessary or desirable, the services of such person could be obtained for such time as may be required.

111. A Commissioner should take the whole of the divorce and matrimonial cases for his district. If he be a county court judge, until it is ascertained to what extent his presence is required—that is to say, how many cases there prove to be (which must for the present be uncertain)—his ordinary duties should be undertaken, if necessary, by a deputy paid by the Treasury. There are at present powers in certain cases to appoint deputies (*see* section 18 of County Court Act of 1888).

Only 8 Commissioners would be required, though possibly it would be found convenient to make the number 10, so as to permit of sittings in the metropolitan courts. If it were found necessary or convenient to have more than one Commissioner for a district, another might be added, and provision would have to be made to meet cases of absence of a Commissioner, through illness or other adequate cause.

The progress of the Commissioner round his district need not be more expensive, nor attended with much, if any, more formality than the progress of a county court judge to each of his courts at present, except the cost of travelling for longer distances and staying further from home. We suggest that the Commissioner, while he remained in office as such, should have all the powers of a High Court judge, and all the jurisdiction of the High Court of Justice in these cases, subject only to certain rules of practice which we will point to hereafter.

Places where Jurisdiction should be exercised.

112. The question then arises, at what places the jurisdiction should be exercised.

The following Table shows the Assize Towns and the number of Assizes for civil business per annum, the District Registries of the High Court, and the places where Registrars have Bankruptcy and Admiralty jurisdiction :—

Northern Circuit.

County.	Assize Towns and Number of Assizes held per Annum for Civil Business.	District Registry of High Court.	Having Bankruptcy Jurisdiction.	Having Admiralty Jurisdiction.
Cumberland	Carlisle (2)	Carlisle	Carlisle.	
			Cockermouth.	
		Whitehaven and Millom.	Whitehaven and Millom.	Whitehaven and Millom.
Westmoreland	Appleby (2)	Kendal	Kendal.	
Lancashire	Lancaster (2)	Ulverstone and Barrow-in-Furness.	Ulverstone and Barrow-in-Furness.	Ulverstone and Barrow-in-Furness.
		Blackburn and Darwen.	Blackburn and Darwen.	Blackburn and Darwen.
		Preston	Preston	Preston.
			Bolton.	
			Oldham.	
			Rochdale.	
			Wigan.	
	Liverpool (4)	Liverpool	Liverpool	Liverpool.
			Salford.	
			Warrington.	
	Manchester (4)	Manchester	Manchester	Manchester.
			Ashton-under-Lyne.	
			Burnley.	

North-Eastern Circuit.

Durham	Durham (2)	Durham	Durham.	
		South Shields		
		Sunderland	Sunderland	Sunderland.
		West Hartlepool	-	West Hartlepool.
		Stockton-on-Tees	Stockton-on-Tees	Stockton-on-Tees.
Northumberland	Newcastle-on-Tyne (3).	Newcastle-on-Tyne	Newcastle-on-Tyne	Newcastle-on-Tyne.
Yorkshire	-	Bradford	Bradford.	
		Dewsbury	Dewsbury.	
		Halifax	Halifax.	
		Huddersfield	Huddersfield	
		Sheffield	Sheffield.	
	Leeds (4)	Leeds	Leeds.	
		Wakefield	Wakefield.	
			Middlesborough	Middlesborough.
			Northallerton.	
	York (2)	York	York.	
		Kingston-upon-Hull	Kingston-upon-Hull	Kingston-upon-Hull.
			Scarborough.	
		Barnsley	Barnsley.	

Midland Circuit.

County.	Assize Towns and Number of Assizes held per Annum for Civil Business.	District Registry of High Court.	Having Bankruptcy Jurisdiction.	Having Admiralty Jurisdiction.
Buckinghamshire	Aylesbury (2)	- - - -	Aylesbury.	
Bedfordshire	Bedford (2)	Bedford	Bedford. Luton.	
Northamptonshire	- - - - Northampton (2)	Peterborough Northampton	Peterborough. Northampton.	
Leicestershire	Leicester (2)	Leicester	Leicester.	
Rutlandshire	Oakham (2).			
Lincolnshire	- - - - Lincoln (2)	Boston Great Grimsby Lincoln	Boston Great Grimsby Lincoln.	Boston. Great Grimsby.
Derbyshire	- - - - Derby (2)	- - - Derby and Long Eaton.	Chesterfield. Derby and Long Eaton.	
Nottinghamshire	Nottingham (2)	Nottingham	Nottingham.	
Warwickshire	- - - - Birmingham (3) Warwick (2)	Coventry Birmingham - - - -	Coventry. Birmingham. Warwick.	

Oxford Circuit.

Berkshire	- - - -	- - - -	Windsor and Maidenhead. Newbury.	
	Reading (2)	Reading	Reading.	
Oxfordshire	- - - - Oxford (2)	- - - - Oxford	Banbury. Oxford.	
Worcestershire	- - - -	Dudley	Dudley. Kidderminster. Stourbridge.	
	Worcester (2)	Worcester	Worcester.	
Gloucestershire	- - - - Gloucester (2)	Cheltenham Gloucester Bristol	Cheltenham. Gloucester Bristol	Gloucester Bristol.
Monmouthshire	- - - - Monmouth (2).	Newport	Newport Tredegar.	Newport
Herefordshire	Hereford (2)	Hereford	Hereford. Leominster.	
Shropshire	Shrewsbury (2)	Shrewsbury	Shrewsbury.	
Staffordshire	Stafford (2)	- - - - Walsall West Bromwich Wolverhampton Hanley	Stafford. Burton-on-Trent. Walsall. West Bromwich. Wolverhampton. Hanley. Stoke-on-Trent.	

North Wales and Chester Circuit.

County.	Assize Towns, and Number of Assizes held per Annum for Civil Business.	District Registry of High Court.	Having Bankruptcy Jurisdiction.	Having Admiralty Jurisdiction.
Montgomeryshire	Welshpool (1). Newtown (1)	Newtown	Newtown.	
Merionethshire	Dolgelly (2).			
Carnarvonshire	Carnarvon (2)	Bangor Carnarvon.	Bangor Port Madoc.	Bangor.
Anglesey	Beaumaris (2).			
Denbighshire	Ruthin (2).	Wrexham	Wrexham.	
Flintshire	Mold (2).			
Cheshire		Birkenhead	Birkenhead. Macclesfield. Nantwich and Crewe.	
		Stockport	Stockport.	
	Chester (3)	Chester	Chester	Chester.

South Wales Circuit.

Glamorganshire		Cardiff	Cardiff Aberdare and Mountain Ash. Merthyr Tydfil. Pontypridd.	Cardiff.
	Swansea (1) Swansea or Cardiff (1). Cardiff (1).	Swansea	Swansea Neath and Aberavon.	Swansea.
Carmarthenshire	Carmarthen (2)	Carmarthen	Carmarthen	Carmarthen.
Pembrokeshire	Haverfordwest (2).	Pembroke Dock	Pembroke Dock	Pembroke Dock.
Cardiganshire	Lampeter (2).	Aberystwyth	Aberystwyth	Aberystwyth.
Brecknockshire	Brecon (2).			
Radnorshire	Presteign (2).			

Western Circuit.

Wiltshire	Devizes (1). Salisbury (1)		Salisbury. Swindon.	
Dorsetshire	Dorchester (2)	Dorchester Poole	Dorchester Poole	Dorchester. Poole.
Somerset		Bath	Bath. Frome.	
	Wells (1)		Wells.	
	Taunton (1)	Taunton	Taunton. Yeovil.	
		Bridgwater	Bridgwater	Bridgwater.
Cornwall	Bodmin (2).	Truro	Truro	Truro.

Western Circuit—continued.

County.	Assize Towns and Number of Assizes held per Annum for Civil Business.	District Registry of High Court.	Having Bankruptcy Jurisdiction.	Having Admiralty Jurisdiction.
Devonshire	-	Barnstaple	Barnstaple	Barnstaple.
	Exeter (3)	Exeter	Exeter	Exeter.
		Plymouth and E. Stonehouse.	Plymouth and E. Stonehouse.	Plymouth and E. Stonehouse.
		Totnes	-	Totnes.
Hampshire	-	Newport (I. W.)	Newport (I. W.).	
		Portsmouth	Portsmouth	Portsmouth.
		Southampton	Southampton	Southampton.
	Winchester (2)	Winchester	Winchester.	
Bristol	Bristol (3)	(*See* for other particulars as in Gloucestershire.)		

South Eastern Circuit.

Huntingdon	Huntingdon (2).			
Cambridgeshire	Cambridge (2)	Cambridge	Cambridge.	
Suffolk	BurySt.Edmunds(1)			
	Bury St. Edmunds or Ipswich (1).	Bury St. Edmunds	Bury St. Edmunds.	
	Ipswich (1)	Ipswich	Ipswich	Ipswich.
		Lowestoft	-	Lowestoft.
Norfolk	-	King's Lynn	King's Lynn	King's Lynn.
	Norwich (2)	Norwich	Norwich.	
		Great Yarmouth	Great Yarmouth	Great Yarmouth.
Essex	Chelmsford (2)	-	Chelmsford.	
		Colchester and Clacton.	Colchester and Clacton.	Colchester and Clacton.
Hertfordshire	-	-	Barnet and St. Albans.	
	Hertford (2)	-	Hertford.	
Sussex	-	Brighton	Brighton	Brighton.
		Hastings	Hastings.	
	Lewes (3)	-	Lewes.	
Kent	-	-	Greenwich (Burney Street).	
	Maidstone (2)	Maidstone	Maidstone.	
			Tunbridge Wells.	
			Canterbury.	
		Dover	-	Dover.
		Ramsgate	-	Ramsgate.
		Rochester	Rochester	Rochester.
Surrey	-	-	Croydon.	
	Guildford (2)	-	Guildford and Godalming.	
			Kingston.	
			Wandsworth.	
Middlesex	-	-	Brentford.	
			Edmonton.	

There are—

61 places, at which assizes for civil business are held.

89 places, with High Court Registries. There are also certain additional places, as above shown, where Bankruptcy and Admiralty cases are heard.

559 places, at which county courts sit, not including the City of London.

113. Several alternatives present themselves for consideration; that the jurisdiction should be exercised—

(1) Only at places where assizes are held.

(2) At places where there is a High Court Registry, and such other places as may be appointed, as, for instance, where bankruptcy or admiralty jurisdiction is exercised.

(3) At every place where a county court is held.

An examination of the above table along with a map will show that to confine the places to assize towns would not, in certain parts, give sufficient convenience to suitors, and this is, no doubt, the reason why it has been found necessary to establish High Court Registries at places other than assize towns as well as at such towns.

On the other hand, to include every place where a county court sits would be undesirable for several reasons. The loss of time, the expense, and inconvenience of a special judge proceeding to every place where a county court is held would be great, and, this plan could not well be adopted without giving jurisdiction to the county courts as such, a course to which there are objections, as we have above stated. Further, the officials at the small courts would not have the experience or practice, which those at more important registries will have. Lastly, the concentration at centres will be of advantage in the disposal of business and in enabling an adequate bar and others to attend the sittings with regularity and convenience. The witnesses are divided in opinion, but we think the weight of opinion favours the second alternative.

Some witnesses, who proposed that county courts should have divorce jurisdiction, and desired to have that jurisdiction exercised at every place where a county court sits, said that, if only selected centres are to be adopted, the poor will still be unable, in many cases, to reach them. We do not think that this would be so in the great centres of population, but there might be some difficulty with regard to the country parts. This, we think, could be very largely minimised by the procedure which we propose, as explained hereafter.

114. We have come to the conclusion that the scheme of selected centres should be adopted, and that this scheme will be the most suitable and convenient, and will give sufficient facilities to poor suitors, if our proposals as to practice and procedure be adopted.

115. We recommend that the sittings should be at each place where there is a High Court registry, and to meet any such difficulties as aforesaid, that the Lord Chancellor should have power to select and appoint any other place or places at which he should think sittings may be reasonably required; and registries should be established at such place or places, with the necessary powers.

116. With regard to the metropolis, we observe that the Lord Chancellor's Committee left cases arising in the area of the metropolitan county courts and in the home and near counties, where access to London is easy, to be dealt with by the present system of the High Court. We think, however, after considering the evidence which has been given before us, that all counties should be brought under the scheme which we recommend, and that the metropolitan area should be treated as a district to which the scheme should apply, and that certain of the courts should be selected as places at which sittings should be held, as convenience may require, and certain of the registries constituted, with the powers of High Court registries for the purpose. There seems to be no adequate reason in principle why cases in which the parties are poor should not be dealt with in the area aforesaid, in the same way as in the country districts.

PART XI.

QUESTION II.—WHAT SHOULD BE THE EXTENT OF SUCH JURISDICTION AND WHAT PROCEDURE SHOULD BE ADOPTED?

(1) *Extent of Jurisdiction.*

117. If these proposals should be adopted, so that local jurisdiction be exercised, in the manner indicated, by the High Court, it would not in our opinion be desirable to place any statutory limitation upon the jurisdiction. As the scheme is not intended to make any greater changes in the exercise by the High Court of its

jurisdiction than such as are necessary in order to meet the justice of cases which under the present system cannot, by reason of cost and inconvenience, be conveniently brought and heard in the High Court in London, we propose that the actual exercise of local jurisdiction should be confined to such cases, and that it should be provided, by rules of court, that only cases within certain limits should be instituted and heard under the local jurisdiction. What those limits should be is a matter at present of some difficulty to determine; and experience of the working of the proposed system may be necessary before a clear conclusion can be reached. Many witnesses think that local hearings should be limited to cases arising between married persons whose income does not exceed 3*l.* per week, while others advocate a higher range of income. The jurisdiction proposed by the Lord Chancellor's Committee for county courts was limited "to cases in which the petitioner can satisfy the judge that his or "her whole assets after payment of debts are not worth, say, 50*l.*, and that the joint "incomes of the petitioner and respondent are less than, say, 150*l.* per annum"; and they added that the petitioner should be required to prove this by affidavits or other proper evidence, with satisfactory corroborative proof, and that it is necessary to insert the provision about income, because many people have little assets and yet a fair amount of income, and as regards a wife, she may have no assets but, whether petitioner or respondent, she may get security for her costs from her husband, which he can provide if he has adequate income. Bearing in mind the evidence as to cost given by many witnesses familiar with the subject which was not before the said Committee, we think it will be desirable that the limit should be a joint income of not more than 300*l.* per annum, with assets not more than 250*l.* We think that this would meet the needs of the great mass of people for whom fresh legislation is required.

The lower limits suggested by the said Committee seem to be too low to meet the difficulties which arise in many cases. When the financial difficulties of married persons with limited incomes, especially where there are children, are borne in mind, and when it is remembered that the husband has to provide the necessary costs for both sides, we do not think the limits we propose too high. There are probably a number of cases in which, although the property and income of the parties exceed the limits suggested by the said Committee, their actual financial position is such that they have little means for enforcing their rights, as, for instance, where debts have been incurred by the spouse whose misconduct is complained of and the petitioner is encumbered with the payment of them, or where a large family of children causes a heavy drain on the family resources, or where income has been charged, or is not yet available, or cannot be anticipated.

118. The rules should provide that the President or judge of the Divorce Division might, on the application of a party whose means were within the limits aforesaid, transfer a case proceeding in the principal registry to a local registry for hearing in the district, and further, that he or the District Commissioner, with his sanction, should have power on the application of a party, to order any case proceeding in a district registry to be transferred to the principal registry and to be heard at the central High Court in London, upon such terms as to security for costs and otherwise as may be thought fit. These powers would be exercised according to the necessities or importance of the case.

119. Our aim is to produce a system which will meet the needs of those who are unfortunate enough to require the assistance of the courts, and yet, except so far as necessary having regard to people's means and convenience, to continue the hearing of their cases before the central High Court.

Experience would rapidly show to what extent, if at all, it would be reasonably necessary to increase the general limits above proposed, and power to increase these limits as experience may dictate should be conferred as stated hereafter.

120. It will be observed that the rules would not limit the jurisdiction of the High Court sitting locally, but merely provide that, as a matter of practice, cases should only be brought into the local courts when within the limits aforesaid. If it should be found, at any time before decree absolute, that the limits had been exceeded, orders and decrees already made should not be invalid, but, in order to prevent the improper use of local courts, power should be given to the King's Proctor to intervene, if the limits aforesaid were found in fact to have been exceeded in any case, and upon such intervention, the President or judge of the said Division might confirm any orders and decrees or order the case to be re-heard before the central court. The

costs of such intervention should be borne by the petitioner, unless the President or judge of the said Division should for good cause otherwise order. And, if in the course of the proceedings, the District Commissioner found that the limits were exceeded, the case might by his order or that of the President or judge of the said Division, be transferred to the central court.

121. We think that the Statute which would be required to give effect to this Report should provide for the making of rules of court for the purpose of carrying out the proposals made, in which, in the first instance, the limits aforesaid should be specified subject to the provisions in the last paragraph, if the proposed limits of amount should be exceeded. But in order to prevent those limits being so fixed as to be incapable of change (except by statute), if experience should show that extension was reasonably necessary, we propose that power should be conferred upon the Rules Committee by Order in Council to alter the rules by increasing the said limits to the extent specified by the Order, and that without such Order no change should be made in the said limits.

122. The jurisdiction of the High Court sitting locally being unlimited, though the exercise of its jurisdiction should be restricted as aforesaid, it would be necessary to confine the exercise to such persons as ought properly to use the local court of their district. We suggest that a suit should only be commenced for local hearing in the court, whose area for proceedings covers the place where was the matrimonial residence of the husband and wife for a year before the last grievance complained of, or, in cases of desertion, for a year before the desertion commenced. Any case brought in a court, where it should not be brought, should be transferred, by order, to the right court or the central court, or be allowed to continue in the court where it was instituted, if a proper ground for so doing should be shown to exist, as, for instance, where a husband had left the country and the wife had gone to her parents in another district than that of the matrimonial home. Similar provisions as to intervention and costs thereof should be made.

(2) *Procedure to be adopted.*

123. We shall deal fully, under Question VII. (p. 129), with the amendment of procedure as regards pauper cases, and we think that the system which we suggest might be applied to proceedings in any district branch of the High Court. We think, however, that the effect of our proposals would be to reduce the cost of proceedings in the smaller class of cases so materially that it would be found that recourse to procedure *in formâ pauperis* would not be very extensively needed. With simplified proceedings, local hearings, and fees properly adjusted to meet the needs of the poor, it might be possible to place more limitation upon the right to proceed *in formâ pauperis* than is necessary in ordinary proceedings in the High Court.

124. We suggest under Question VII. (p. 126), the proper method of dealing with claims for damages.

125. The proceedings should be entitled in the High Court, and in the particular District Registry, and the district registrar should have all the powers of a registrar of the Divorce Division of the High Court. The interlocutory proceedings usually dealt with by a registrar should be dealt with by the district registrar, but all those steps, which are necessary with regard to the service of proceedings and enforcement of process, should be attended to by the bailiffs and other county court officials.

126. To facilitate proceedings by persons at a distance from the district registry, the proceedings (which should be commenced by a writ), might be commenced by the issue of the writ out of any county court registry in the district, and after service be brought into that registry and forwarded by the registrar to the central district registry. If there were no appearance, there is nothing more to be done until the hearing, notice of the date for which should be sent to the plaintiff. A very large percentage of cases would thus be dealt with. Appearances might be entered in the defended cases (probably not very numerous), either at the place of issue of writ, and notice thereof sent on to the central district registry, or in that registry.

127. There would thus be easy means within the reach of poor people of commencing and continuing their proceedings. The service would be effected by the bailiffs, as in ordinary county court procedure, and a certificate of service and identity

filed. The only difficulty is about the identity of the person served, but this arises in every kind of proceeding. In practice, we understand, no difficulty is found, even though the process of the county court in judgment summonses is served by the bailiffs, and defendants are committed thereon. Nor do we understand that any difficulty has been found with regard to service by the police of summonses under the Summary Jurisdiction Acts. If the bailiff does not know the parties or has not adequate means of himself identifying the party served, the identity would have to be established by some one who knows the party and accompanies the bailiff, and can prove the identity in the usual way, or leave might be given to the plaintiff to effect and prove service in the ordinary way of the High Court.

128. The principal preliminary interlocutory applications to the court in divorce cases are for leave to effect substituted service, and to dispense with co-respondents. These are made *ex parte*, and there should be no difficulty, if the affidavits, upon which they are made, were left at the registry in which the proceedings are commenced for transmission to the central district registry, to be laid before the commissioner. Having regard to the class of case which is likely to come before him, it is probable that in few cases would he need to have the application argued before him.

Contested applications for custody of children, &c. would be heard by the district commissioner: the advantage of a local system is the availability of the judge who would continually visit his district.

We should not propose that registrars, at any places except those fixed upon for the hearing of cases, should deal with any interlocutory applications usually dealt with by a registrar of the High Court. These should be disposed of by the registrar, upon whom the special powers are conferred.

129. We deal more particularly with points of procedure under Question VII. (p. 120). The procedure for the district courts would be similar to that in the central High Court, but special tables of fees and costs should be fixed, and provision made for the taking of a shorthand note of every case, as is done at present in the High Court.

130. To ensure uniformity of practice, and to prevent a case which had failed in one district being brought in another, we suggest that the papers in every case should, before the case is heard, be forwarded to the Principal Registry and be passed by the registrar there. This would be following the practice which is found necessary in the Divorce Court, where no case is brought to trial or for hearing without a certificate that the proceedings are in order. Any doubtful case could then be drawn to the attention of the President or judge of the High Court in the Divorce Division, who might order its transfer to the central High Court, and he should have the same power at any stage of the case and on any ground upon which he thought fit to act.

131. It would be desirable also to follow the Divorce Court practice of keeping minutes of the proceedings. It is very frequently necessary for the court to have the means of ascertaining from its own minutes what has happened in a case, especially as some orders, *e.g.*, for payment of money or custody of children, run on for years. Provisions as to these matters should be made by rules of court, and the rules could be altered from time to time as found necessary or expedient. Copies of the decree nisi and of any order as provided by rules of court should in all cases be sent to the Principal Registry to be recorded, so that there should be one central place of search, and when a case is ready for decree absolute the papers in it should be remitted to London, and all decrees absolute be pronounced by the High Court in London. This would not require the attendance either of parties or their solicitors; the London officials would see that the case was ready and fit for decree absolute, and the decree would then be made as of course.

132. Intervention by the King's Proctor, or by any one of the public (if this latter power be preserved), should be in London, and the proceedings would then be transferred to London, unless the President or judge of the High Court in London should order them to be continued, heard, and determined in the district.

133. The decisions of the District Commissioners should not have effect as binding precedents, as do judgments of judges in the High Court.

PART XII.

QUESTION III.—SHOULD ANY, AND, IF ANY, WHAT ALTERATIONS BE MADE WITH REGARD TO THE EXERCISE OF THE JURISDICTION CONFERRED BY THE SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895, AND THE PROVISIONS OF THE LICENSING ACT, 1902, RELATING TO SEPARATIONS IN CASES OF HABITUAL DRUNKENNESS?

Present State of the Law and Statistics.

134. In order to give further protection to married women, with regard to their maintenance and safety, several Acts have been passed. In 1878, by 41 & 42 Vict. c. 19, sec. 4, it was provided that, if a husband should be convicted of an aggravated assault upon his wife, the court or magistrate before whom he should be so convicted might, if satisfied that the future safety of the wife would be in peril, order that the wife should be no longer bound to cohabit with her husband, and might order the husband to make weekly payments to his wife in accordance with his and her means, and might vary the amount on the application of either party in case of alteration of means, and might give her the custody of any children of the marriage under the age of 10 years, but no order for payment of money by the husband or custody of children by the wife, was to be made in favour of a wife who should be proved to have committed adultery, unless such adultery had been condoned, and any such order might be discharged, upon proof that the wife had, since the making thereof, been guilty of adultery.

In 1886, further powers were conferred upon the magistrates, by 49 & 50 Vict. c 52, which gave two justices in petty sessions, or any stipendiary magistrate, if satisfied that a husband, being able wholly or in part to maintain his wife or his wife and family, had wilfully refused or neglected so to do, and had deserted his wife, power to order him to pay to her weekly sums not exceeding 2*l*., in accordance with his and her means, and to vary the amount on the application of either party in case of alteration of means, and to repeal the order at the instance of the husband at any time, and confirm, discharge, or vary any previous order thereon. The Act also contained a provision similar to that of the Act of 1878 as to an adulterous wife.

135. The said 4th section of the Act of 1878 and the Act of 1886 were repealed by the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), according to which (section 4) any married woman whose husband shall have been convicted summarily of an aggravated assault upon her within the meaning of section 43 of the Offences Against the Person Act, 1861, or whose husband shall have been convicted upon indictment of an assault upon her, and sentenced to pay a fine of more than 5*l*. or to a term of imprisonment exceeding two months, or whose husband shall have deserted her, or whose husband shall have been guilty of persistent cruelty to her, or wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain, and shall by such cruelty or neglect have caused her to leave and live separately and apart from him, may apply to any court of summary jurisdiction acting within the city, borough, petty sessional or other division or district, in which any such conviction has taken place, or in which the cause of complaint shall have wholly or partially arisen, (or where she is entitled to apply on the ground of the conviction of her husband upon indictment, to the court before whom her husband has been convicted) for an order or orders under the Act. And, by section 5, the court may make an order or orders, containing all or any of the following provisions:—

(*a*) A provision that the applicant be no longer bound to cohabit with her husband (which provision while in force shall have the effect in all respects of a decree of judicial separation on the ground of cruelty);

(*b*) A provision that the legal custody of any children of the marriage between the applicant and her husband, while under the age of 16 years, be committed to the applicant;

(*c*) A provision that the husband shall pay to the applicant personally, or for her use, to any officer of the court or third person on her behalf, such weekly sum not exceeding 2*l*. as the court shall, having regard to the means both of the husband and wife, consider reasonable;

(*d*) A provision for payment by the applicant or husband, or both of them, of the costs of the court, and such reasonable costs of either of the parties as the court may think fit.

The further sections of the Act deal with limitations on the powers of the court, the powers of the court to vary or discharge orders, procedure and enforcement of orders for payment of money, &c.

136. In addition to these powers the Licensing Act of 1902 (2 Edw. VII. c. 28), s. 5, gave powers both to a husband and a wife of applying for an order under the said Act of 1895, in case the respondent is an habitual drunkard as defined by section 3 of the Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), and the court may make an order containing provisions (*mutatis mutandis*) similar to those above mentioned and may, instead of making an order for non-cohabitation against a wife, with her consent, order her to be committed to and detained in any retreat licensed under the Inebriates Acts, 1879 to 1900, the licensee of which is willing to receive her; and such order shall have effect as if she had been admitted to the retreat under section 10 of the Habitual Drunkards Act, 1879, as amended by any subsequent enactment, and the court may order an officer of the court or a constable to remove her to the retreat accordingly.

The definition of "habitual drunkard" as given in section 3 of the said Act of 1879 is as follows: "'Habitual drunkard' means a person who, not being amenable "to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate "drinking of intoxicating liquor, at times dangerous to himself or herself or to "others, or incapable of managing himself or herself, and his or her affairs."

137. There is no report in Hansard of any discussion of the Bill which became the Act of 1895, and it may be doubted whether the effect of its provisions were adequately appreciated at the time it was passed.

138. The following statistics show the great extent to which the Act of 1895 is now used. The numbers of the orders granted under the Act of 1902 to husbands are shown, but those granted to wives under that Act are not shown separately. They are included in the total numbers of orders granted to wives.

Separation Orders.

	1907.	1908.	1909.
Orders granted to wives—			
With provision for payment of alimony	6,559	6,535	4,794
Without such provision	175	162	215
Total to wives	6,734	6,697	5,009
Orders granted to husbands—			
With provision for payment of alimony to wife	269	278	213
Without such provision	4	11	5
Total to husbands	273	289	218
Total separation orders granted	7,007	6,986	5,227

Maintenance Orders.

	1907.	1908.	1909.
Total maintenance orders granted without provision for non-cohabitation.	547	901	2,014
Total separation orders granted to wives and husbands containing provision for payment of alimony.	6,828	6,813	5,007
Total orders containing provision for payment of alimony.	7,375	7,714	7,021

In consequence of a question raised by one of the witnesses as to the correctness of some of the returns to the Home Office upon which the published statistics were based, that Office caused fresh returns to be made for the years mentioned in the above tables, and Mr. Ernest Edward Stringer, one of the officials of the Office, was appointed to examine the returns. The results of an examination made by him are given in the tables. There is a slight difference between the figures in the tables for 1907 and 1908 and those given for the same years in the Judicial Statistics, but the difference is immaterial for present purposes. The statistics published for 1909 agree as regards the above figures 5,227 for separation orders, but we understand that the orders for maintenance only or separation with maintenance appear as 7,120 instead of the above figure of 7,021.

Tables of statistics of separations, including magistrates' separations and private deeds, in England and Wales and certain other countries were put in by Mr. R. T. Gates (Vol. I., p. 217). These show a much larger average, in proportion to the population in England and Wales, than in those other countries, but the figures for England and Wales may include cases in which maintenance only was ordered, and they do not show what numbers returned to cohabitation.

Observations on the Acts and the administration of the Law.

139. The Act of 1895 consolidated and extended the two previous Acts, and a noticeable feature is that, whereas the Act of 1886 did not give the courts of summary jurisdiction power to make orders for non-cohabitation in cases of desertion where the principal need is provision for maintenance, the Act of 1895 gave the further power to make a non-cohabitation order, as if what was needed were protection as well as maintenance. It is of importance to appreciate this at the outset of the consideration of Question III., because, for some 10 or 11 years, it was a matter of common form for the order made on the wife's application to contain the provision against cohabitation, as well as the provision for maintenance, whether the case was one in which protection was needed or not. It was not until it was pointed out in the case of *Dodd* v. *Dodd* (L.R. 1906, P. 189), approved by the full Court of Appeal in *Harriman* v. *Harriman* (L.R. 1909, P. 123), that the magistrates had a discretion as to whether the order should or should not include a provision against cohabitation that a change began to be made by leaving out that provision, in cases where all that was really needed was a provision for maintenance. In the above table, the change will be noticed. There is a large diminution of the orders for non-cohabitation, and a large increase in the orders in which a provision for maintenance only is made.

140. We have already dealt with the objection to giving jurisdiction in divorce cases to Courts of Summary Jurisdiction, and we should have been glad if we could have recommended that the whole of the jurisdiction, at present exercised by these courts, should be transferred to a superior court.

It cannot be considered satisfactory that a court of summary jurisdiction should have power to make orders, which may separate married persons for the rest of their lives. Such orders require, in our judgment, the deliberate consideration of a superior court. The ready opportunity for applications for orders of this character to a court of summary jurisdiction is undoubtedly likely to lead to hasty and ill-considered action by the applicants.

The evidence, which has been laid before us, demonstrates that this result follows; for we find that a very large percentage of the persons separated by such orders become reconciled afterwards, within a short time, largely through pressure caused by the increased cost of living separately: by some witnesses this percentage is placed as high as 50 and even, in some instances, as high as 75.

Again, the courts of summary jurisdiction are, with the exception of the few metropolitan and stipendiary magistrates' courts already mentioned, the ordinary petty sessional courts presided over by magistrates who, although they may in some instances be lawyers by profession, are, in general, laymen possessed of no legal training or qualifications, assisted by a clerk, who may or may not be a competent solicitor or clerk.

Moreover, these courts form part of the judicial system for administering the criminal law in the case of petty offences. We think there is a serious objection to a court, whose main duties are of a criminal character, entertaining applications,

which are of a civil nature, concerning the domestic relations of men and women and their children, applications which, if granted, may produce the practical although not the legal dissolution of the marriage tie.

141. The evidence satisfies us that the general administration of the Acts is not satisfactory, where these cases are dealt with by lay magistrates. Although, in some parts of the country, this may not be the case, owing to special arrangements for hearing the cases before a bench sitting regularly on such applications, in others we are informed that orders are made too easily and on too slender materials, and in others are too difficult to obtain. To some extent the provisions of the Acts may be to blame for these results, because they contain no power to make a temporary order for non-cohabitation, and, therefore, although it may be that all that is required is an order affording temporary protection and time for reflection, all that can be done is to make a full order, or adjourn the case, without any power to make provision for the maintenance of wife and children, in the meantime. We feel, after the voluminous evidence which we have taken from all parts of the country, that it is not right to leave the administration of powers, which may produce the practical though not the legal dissolution of the tie of marriage, to courts whose duties and experience are mainly confined to dealing with petty offences.

142. The question of the effect of permanent separation between husband and wife, without divorce, will be more fully considered under Question VI. (p. 91), and we need here only state that, where it has been effected by these separation orders, its consequences are in many cases disastrous; in the case of men, leading in numerous instances to adulterous connections and general immorality, and in the case of women, but to a lesser extent, to the same results.

143. We consider that the power of the courts of summary jurisdiction to make orders, which have the permanent effect of a decree of judicial separation, should be abolished.

144. But although separation orders have many disadvantages and lead to irregular connections being formed, and although in many cases their economic consequences are bad both for husband and wife and children, still they are to some extent necessary for the purposes of protection; they are at present the only remedy within the reach of the very poor, and they have been made use of by ill-treated wives for many years.

We think, for these reasons and also because these orders afford a remedy for Roman Catholics and persons disapproving of divorce, that they cannot now be altogether abolished, and our conclusion is that the jurisdiction of courts of summary jurisdiction to grant separation orders and maintenance orders should be preserved, but that the exercise of the jurisdiction should be limited, as we shall indicate.

145. The proper principle to apply to such courts is that their orders should only be granted where they are necessary for the reasonable immediate protection of the wife or husband, or the support of the wife and the children with her, and that if it is or becomes necessary for the parties to be permanently separated, application for that purpose should be made to the superior court by a simple process, in the manner we shall specify. We believe that the jurisdiction so limited would be adequate to meet all the necessities which exist, and would leave few cases in which an application for permanent separation to the superior court would be necessary for the class of people to whom the Act mainly applies, except those cases in which the applicant was entitled to claim, and desired to claim, a divorce.

146. Under the Act of 1895, a wife can apply for an order, but a husband cannot, and, in the case of some of the offences, there may be as much reason for making an order on a husband's application, as there would be if the offence were by the husband, and the application by the wife. We deal with this in the answer to the next question, and here merely state that we consider the Act should be made to apply to applications by the husband in proper cases.

147. The jurisdiction under the Act of 1902 should, we think, be maintained, but limited to a period as hereinafter stated, leaving the superior court to make an order of a permanent character, if necessary. We base this upon the same principles as those we have already indicated with regard to the Act of 1895.

148. The Acts of 1895 and 1902 have a practical limitation in this, that the court has only power to order maintenance to a wife not exceeding the weekly sum of 2*l*., and the result is to confine the operation of these Acts almost entirely to the poorer classes. There may well be cases fit for the superior court in which the limit aforesaid may be exceeded, and we think it ought to be provided that the High Court should have powers corresponding to those of the courts of summary jurisdiction, but without limitations of amount of maintenance. At present, a court of summary jurisdiction may refuse an order in cases more fit for the High Court, but that court cannot deal with some of the cases, which may be brought before a court of summary jurisdiction, as, for instance, cases under the Act of 1902. (*See* section 10 of the Act of 1895.)

PART XIII.

QUESTION IV.—ARE ANY, AND, IF ANY, WHAT AMENDMENTS OF THE SAID ACTS OF 1895 AND 1902, AND OF THE PROCEDURE AND PRACTICE THEREUNDER DESIRABLE?

149. A study of the Acts, assisted as we have been by the evidence given before us with regard to numerous points to which our attention has been drawn, has led us to the conclusion that these Acts, and the procedure and practice thereunder, require amendment in many respects, which we now proceed to enumerate and consider.

Amendments as to Grounds on which Orders may be made.

150. From section 4 of the Act of 1895 it will be observed that the grounds, upon which an order may be made in favour of a wife, are—

(1) Conviction of husband summarily of an aggravated assault upon her.

(2) Conviction of husband upon indictment of an assault upon her, with sentence to pay a fine of more than 5*l*. or to a term of imprisonment exceeding two months.

(3) Desertion by the husband.

(4) Persistent cruelty to her by husband.

(5) Wilful neglect of husband to provide reasonable maintenance for her, or her infant children, whom he is legally bound to maintain.

In (4) and (5) the cruelty or neglect must have caused the wife to leave and live separately from her husband.

151. The words "persistent cruelty" without any definition have given rise to difficulty and diversity of view. As to (1) and (2) it should not be the mere fact of conviction which should be a ground for a separation order, but the fact, if it be the case, of the wife being unable to live safely with her husband, though proof of the conviction would generally establish the want of safety.

152. Many witnesses have pointed out that the condition attached to (4) and (5) gives rise to great difficulty and inconvenience and ought to be dispensed with. If a man be guilty of cruelty to his wife, or of neglect to maintain her and the children, she cannot obtain an order, without leaving the house, which, in many cases, she ought not to be compelled to do. For example, she may be carrying on a small trade or business or work of some kind in the house in which she lives with her husband, or for other reasons she may be desirous of continuing to live in the marital home. Protection against cruelty and neglect to maintain is required and should be given to her, without enacting the condition that she should abandon her home.

In our opinion, the condition should be dispensed with.

153. It was suggested by certain of the witnesses that adultery should be added as a ground upon which an order might be made. We are, however, of opinion that this ground does not fall within the principle upon which, as already stated, courts of summary jurisdiction should act, and that this offence, whether as a ground of separation or divorce, should be dealt with by the court having jurisdiction in divorce.

154. We recommend that the Acts should be amended, so that the grounds upon which orders may be made shall be the following:—

(*a*) Cruelty by the respondent to the applicant.
(*b*) Habitual drunkenness on the part of the respondent.
(*c*) Wilful desertion by the respondent of the applicant, without the consent or against the will of the applicant, and without reasonable cause.
(*d*) Neglect by the husband to provide reasonable maintenance for the wife, or her infant children, whom he is legally liable to maintain.

Definition of "Cruelty."

155. With regard to cruelty—this should be clearly defined by the Act, so as to remove, as far as possible, all difficulties as to its meaning. It was said that in the High Court, where cruelty is a ground for judicial separation, and one of the grounds which may be coupled with adultery in order that a wife may obtain a divorce, there has not been uniformity of view as to the meaning of cruelty on the part of either judges or juries. To some extent this may be the case, though the extent has, we think, been exaggerated by the witnesses. But some variety is not unnatural, when changes of social life take place, and when the word has to be applied to cases in different ranks of life, and when no definition is to be found in the Statutes. A clear definition is, however, to be found in the judgments in the Court of Appeal and House of Lords in the case of *Russell* v. *Russell* (L.R. 1895, P. 315; 1897 A.C. 395), and, with this in mind, we suggest that the amended statute should contain the following definition:—

> Cruelty is such conduct by one married person to the other party to the marriage as makes it unsafe, having regard to the risk of life, limb, or health, bodily or mental, for the latter to continue to live with the former.

But, however this definition is expressed, it should include—

(1) Actual violence, and acts of a physical character.
(2) Grave insults and offensive conduct, though not amounting to actual physical violence.
(3) Drunkenness.

The evidence required should be such as to satisfy the tribunal that, having regard to the risk aforesaid, it was no longer reasonably safe for the applicant to reside with the respondent, and, without being so satisfied, the tribunal should not find cruelty.

The definition should also include the following acts, and proof of either of them should be sufficient proof of cruelty as defined:—

(1) That the respondent has knowingly, or negligently, infected the applicant with venereal disease.
(2) That a respondent husband has compelled his wife to submit herself to prostitution.

The risk mentioned in the definition aforesaid should, we think, be inferred in these two classes of case from proof of the act. At present, it is more than doubtful whether such offences are covered by the words "persistent cruelty"; the first case is sadly common, and the second is a horrible form of criminal offence which, according to some of the evidence, takes place more frequently than is generally known. We shall revert to this subject under Question VI. (p. 99).

Definition of "Habitual Drunkard."

156. With regard to the term "habitual drunkard"—it was suggested in the evidence that the definition above given (p. 67) is unsatisfactory.

Dr. Branthwaite, His Majesty's Inspector for England and Wales under the Inebriates Act, stated that this definition has proved very unsatisfactory in many ways, and that the defects have been admitted and discussed by a Departmental Committee appointed to inquire into the operation of the law relating to inebriates in England in 1908, and by a similar committee appointed by the Secretary for Scotland in 1909. He gives (41,302) the definition suggested by the English Committee, and an alternative definition suggested by the Scottish Committee, but he recommends a further definition as follows:—

> "An inebriate means a person who habitually takes or uses any intoxicants, and while under the influence of such intoxicants or in consequence of the effects thereof is at times (*a*) dangerous to himself, or dangerous or a cause of terror to

others; or (*b*) a cause of serious harm or suffering to members of his family or others; or (*c*) incapable of managing himself or his affairs. (The expression 'intoxicant' to be understood to include any intoxicant liquor, or sedative, narcotic, or stimulating drug or preparation.)"

Dr. Branthwaite points out that this definition does not vary greatly from the other two, but seems to him to remove some of the objections to both. Although his definition may be open to some criticism (*see* 41,303–8), we consider it will be difficult to frame a better one, and that it should be adopted.

It is said by some that the term need not be defined, but we think that having no definition is leaving too much discretion to a court of summary jurisdiction.

If the drunkenness is not such as to make the offender a habitual drunkard within the definition, yet it may be such and so frequent as to make the married life intolerable, and to lead to the reasonable conclusion that there is the risk above stated if the applicant continue to live with the respondent. Such drunkenness should come under the head of cruelty. Whether the drunkenness be habitual within the meaning aforesaid of that term, or only such as last mentioned, it should be an answer to the application founded on it that it has been materially conduced to by the applicant.

Desertion.

157. Desertion is not an offence under the Act of 1857, if the leaving is with reasonable cause, and although there is no reference to reasonable cause in the Act of 1895, the same principle should apply. It does not seem necessary or advisable that a statutory definition of "reasonable cause" should be given, as it is impossible to anticipate all the cases which may occur; a marital offence for which a separation order or decree could be obtained would be reasonable cause, and other cases have been the subject of judicial decision: *See* the cases of *Russell* v. *Russell*, (L.R. [1895], P. 315 C.A.); *Oldroyd* v. *Oldroyd* (L.R. [1896], P. 175); *Synge* v. *Synge* (L.R. [1900], P. 180; L.R. [1901], P. 317); *Mackenzie* v. *Mackenzie*, (L.R. [1895], A.C. 384 at p. 389); *Ousey* v. *Ousey* and *Atkinson*, (1874), (L.R. 3 P. & D. 223); *du Terreaux* v. *du Terreaux*, (1859), (1 Sw. and Tr. 555).

Relative Position of Men and Women.

158. Lastly, on this head of grounds on which orders may be made, it is convenient to consider the relative position of men and women. Orders under the Act of 1895 can only be obtained by women, but under the Act of 1902 either men or women can apply. We think it would be right to give the husband the same rights as a wife in cases of cruelty, as well as of habitual drunkenness, though in actual practice the cases in which he would require to put forward, and could make, a claim would probably be exceptional. We see no reason also why, if a wife deserts her husband, or will not help to maintain him, and has means, and he has no means of livelihood (for example in the case of an invalid), an order for maintenance should not be made against her.

Amendments as to—

Form and duration of order, &c.

159. A material distinction exists between cases in which the applicant requires protection, whether with or without maintenance, or only needs provision for maintenance. The distinction was observed in the Acts of 1878 and 1886, but was not made sufficiently clear in the Act of 1895, with the results already stated, until after the two cases above mentioned (p. 68).

The proper remedy where protection is needed is a separation order, but, where maintenance is all that is necessary, the order should be one for payment of money. Cases of cruelty and habitual drunkenness fall within the former category: those of desertion and neglect to maintain within the latter.

160. With regard to the first of these two classes, we think the proper order is that the applicant be no longer bound to cohabit with the respondent (which provision, while in force, shall have the effect in all respects of a decree of judicial separation by the High Court), with the other necessary provisions as to custody of children, alimony, and costs.

But, in addition to the existing powers of varying, altering, or discharging orders, there should be a power to review a separation order, on the application of either party. The party obtaining the order should be permitted to apply at any time, but, in order to prevent oppression, the party against whom the order was made should only be allowed to apply at the expiration of six months from the date of the order, unless the court on an *ex parte* application give leave to apply within that time. Upon such review, the court should have power to vary, or discharge, or continue the order. Similar powers of fresh application might be given, dating from the order of review. These provisions would enable a respondent to satisfy the court that his or her conduct, since the order or last order, had been such that the applicant ought to give the respondent another chance.

161. Our view is that the Acts at present do not give the court sufficient discretionary powers; that the orders to be made by a court of summary jurisdiction should not be of a permanent character; that the jurisdiction should be exercised with the object, so far as possible, of reformation and not of separation, with all its possible evil consequences; and that it has been demonstrated, by the evidence as to the large percentage of reconciliations which take place after orders, that what is mostly needed is a suitable means of enforcing temporary separation where it is necessary, with more control by the court over the people for whom this jurisdiction exists than it possesses at present. People who are well-to-do are able to consult solicitors, counsel, and friends of experience before they determine to embark on matrimonial causes, and only do so as a rule with deliberation, but the poorer classes have not these advantages, and the applications to the magistrates are often made without consideration, in fits of temper, and with no due appreciation of the gravity of the action. The summons is often refused, and, when granted, is often dropped, and, when heard, is often rejected.

If the procedure which we suggest should fail in its object and a permanent order become necessary, it should be left to the superior court to make such order, either for judicial separation or for divorce, if the case is one in which there are grounds for divorce, and that remedy be claimed.

The powers of courts of summary jurisdiction in these matrimonial matters should, in our view, be rather of a disciplinary character than such as to enable them to decide finally as to the status of married persons.

162. For the reasons which we have given, we are of opinion that no separation order of such courts should be continued for a period of more than two years from the date of the original order separating the parties, at the expiration of which time the order and continuing order or orders, if any, should determine, unless, before such expiration, the party obtaining the original order apply to the High Court to deal further with the matter, in which case the order should run on till the High Court has dealt with it. Such application might be made by lodging the order, or a certified copy, with the High Court, and serving a notice on the respondent of an application to have the order converted into a decree of judicial separation or of divorce, and, upon such application, the court would deal with the matter, as if a suit had been commenced, and should be at liberty to proceed either on the notes of the hearing before the court of summary jurisdiction, or upon further evidence, as it thought fit. We have fixed upon the period of two years, partly because that period gives ample time for the exercise of the magistrates' powers to produce its effect (a large proportion of the orders would probably not last so long), and partly because it might tend to prevent hasty applications being made to the High Court, for it must be remembered that the magistrates' order would not be a bar to proceedings in the High Court at any time. If the proposals already made as to local hearings by the High Court be adopted, there would be no hardship in those cases, where a permanent order became necessary, being thus passed on to the High Court.

163. If, on an application for an order, or to review, discharge, or continue an order, the court of summary jurisdiction considered that the case was one which should be dealt with at once by the High Court, it should have power to remit the proceedings to the High Court. Section 10 of the Act of 1895 requires amendment. Instead of refusing to deal with a case on the ground that it is a fit case for the High Court, there should be power to send the proceedings forthwith to the High Court, and power should be conferred upon the High Court to dispose of them, as if they had been originally commenced before it. This power should apply, whether the case is for separation, or only for maintenance.

164. Some witnesses have suggested that a return to cohabitation should not put an end to a separation or maintenance order: *See* the evidence of W. Fitzsimmons (19,517–21), G. B. C. Yarborough (21,090), and J. G. Silcock (22,307). We think, however, that a return to cohabitation should have the effect of determining a separation order. If the order were allowed to remain operative after a return to cohabitation, a wife would be enabled to leave her husband when and as often as she liked, sometimes without any reasonable cause, and then proceed against him for non-payment under the order. In the case of *Matthews* v. *Matthews* (28, Times Law Reports, p. 421), the majority of the court expressed the opinion that the order runs on notwithstanding resumption of cohabitation, until application is made under section 7 of the Act of 1895, to have it cancelled, but, in effect, this will probably mean that the order will run on indefinitely. We understand that such an application is seldom made; the order is allowed to lapse without any application for discharge.

A suggestion was made by Mr. W. Fitzsimmons (19,520), that the order should not come to an end until three months after resumption of cohabitation, but even so it would still be necessary to apply again to continue it, if cause for so doing arose. On the whole, we think it simpler and more satisfactory, where cohabitation has been in fact resumed after a separation order, to leave any further misconduct for a fresh application.

165. Passing now to cases of desertion and neglect to maintain, we would point out that orders of separation are not the suitable remedy. In both these cases, all that is needed is an order for maintenance, and, if necessary, for the custody of the children, and no obstacle should be put in the way of the parties resuming, or continuing, cohabitation.

It would not be necessary to place any limit of time on the duration of such an order, but power should be given to the magistrates to revoke or vary it in amount, or otherwise, if there be sufficient cause for so doing. If a deserted wife unreasonably refused to receive back her husband (who *bonâ fide* desired to return to her) and to live with him, the power of revocation aforesaid could be used.

It was, however, suggested that without a separation order, a husband might force himself on a deserted wife, without any *bonâ fide* desire to continue to cohabit with her, but merely with the object of putting an end to the order, and then leaving her again. This could be effectively prevented, if the order were to run on, notwithstanding resumption of cohabitation, till notification to the court by the wife of the resumption of cohabitation, or until an order of revocation was obtained.

To guard against undue or unfair compulsion by the husband on the wife to surrender the order, it might be provided that the notification aforesaid should not operate to end the order, until the officer of the court, to whom we shall hereafter refer, certified that there was a *bonâ fide* resumption of cohabitation, and that a wife was not being improperly compelled to surrender the order which she had obtained. If it were sought to enforce the order for payment of money becoming due during a period of resumed cohabitation, the order still running on, the court should not enforce it for money due during such period, if the husband has maintained his wife during that period.

In cases of neglect to maintain, the husband might, or might not, be living in the same house as his wife if the change we have above suggested, viz., that she need not leave him before obtaining an order, be made, and therefore, the order should run on, till put an end to in the manner above indicated.

166. The difficulty, which arose in such cases as *Dodd* v. *Dodd* and *Harriman* v. *Harriman* (p. 68), is now obviated when the magistrates make an order for maintenance only, but, if the procedure we suggest were adopted, it could not arise, and as there would be no order to bar the resumption of cohabitation, desertion once begun would run on till put an end to by resumption of cohabitation or agreement. At present, if a separation order be made, desertion comes to an end, and although the respondent has deserted before the order, his continuing away after the order will not be considered as part of a period of desertion, which would, at the end of two years, give a right to proceed in the High Court for judicial separation, or for divorce, if there were also adultery.

These considerations, however, would not be so material if divorce could be obtained by a woman on the ground of adultery alone, though the change we suggest would still be of importance as to judicial separation after a period of desertion, or if such desertion were made a ground of divorce.

Further Amendments.

167. Some witnesses suggested that a larger amount of the husband's income should be given for the maintenance of the wife, that a greater or less amount of evidence of cruelty should suffice for an order, and that all cases should be remitted to probation officers in the first instance. These suggestions relate to the way in which justices should exercise any discretion they may have as to making orders, rather than to amendments, which can usefully be made by the Legislature.

168. There are, however, other amendments, either suggested by witnesses or by consideration of the Act and present procedure, which we think ought to be made :—

(*a*) Power should be given to adjourn a case for any time not exceeding three months and to make an order for maintenance in the meantime, when the application is for separation. This would give the parties full time for consideration, and would enable the probation officer, or police court missionary, to have an opportunity of exercising any influence he may possess.

(*b*) It would also be an advantage if in addition to or in lieu of an order for separation, justices were given power to bind over the husband, with or without securities, to be of good behaviour.

(*c*) (1) Maintenance money should be paid to an officer of the court, unless the wife expressly requests that it should be paid to her, or to some third person on her behalf. This exception would provide for cases where the wife is of a somewhat higher class than is usual in separation cases. With this exception, it should be imperative that the money should be paid to an officer of the court. That course would relieve the wife of many difficulties, would lead to payments being made more regularly, would remove disputes as to the amounts owing, and would prevent undue pressure being put upon the wife by the husband, in separation cases, with the view of improperly compelling her to return to cohabitation.

(2) "Officer of the court" should be defined so as to include "a superintendent "or inspector of police or other officer of police of equal or superior rank, "or in charge of any police station" (*see* Summary Jurisdiction Act, 1879, section 38), and any probation officer or police court missionary.

(3) A provision that the husband should give notice of any change of address to the officer of the court to whom the maintenance money is ordered to be paid, with a penalty in case of his failing to do so without reasonable excuse, would be useful. There is a similar provision in the Children Act, 1908, section 75 (6).

Defences.

169. Section 6 of the Act of 1895 is as follows :—

"No orders shall be made under this Act on the application of a married woman if it shall be proved that such married woman has committed an act of adultery: Provided that the husband has not condoned, or connived at, or by his wilful neglect or misconduct conduced to such act of adultery."

There appears to be an omission to provide for such causes as would be a defence to a suit for divorce or for judicial separation being good defences to an application for an order, whether for separation or maintenance. It would seem right to amend the Act in this respect, more especially if further causes for relief by divorce are introduced.

Discharge of Orders.

170. Section 7 of the said Act contains powers to vary and discharge an order, which should be extended as we have suggested. The last sentence of that section runs thus: "If any married woman upon whose application an order shall have been made "under this Act, or the Acts mentioned in the schedules hereto, or either of them, "shall voluntarily resume cohabitation with her husband, or shall commit an act of "adultery, such an order shall upon proof thereof be discharged." Some amendment

of section 7 of the said Act will be needed in consequence of the foregoing proposals, but, in addition, a distinct amendment is required, with regard to discharging an order on the ground of the wife's adultery since the date of the order.

It has been pointed out by some of the witnesses, that, if a married woman commit an act of adultery after an order, the court has no discretion as to whether or not the order should be discharged, and that there are cases in which a husband may connive at, or be guilty of conduct conducing to, such subsequent adultery in order to get rid of the order, as, for instance, by placing temptation in her way, or failing to pay the allowance ordered, and thus exposing her to temptation. To meet this point, we think that a proviso, similar to that in section 6 of the Act as to condonation, connivance, or conducing by wilful neglect or misconduct to the adultery, should be introduced with regard to an application for the discharge of an order under section 7.

Further, although an order be discharged, if it be discharged in such circumstances that the parties do not resume cohabitation, the court should still have power to provide for the custody and maintenance of the children, and to exercise a discretion according to the circumstances of each case, having regard to the best interests of the children, and even although there may have been some fault since the date of the order in the party to whose care they were originally committed.

If an order be discharged on the ground of the original applicant's fault, any arrears then due, which have accrued since the date of the fault on which the discharge is founded, should be cancelled. At present arrears only cease at the date of the order of discharge; and if, for instance, a woman has been living in adultery since the date of the order (a common case), without the respondent's knowledge, it is a hardship upon him if his obligation is not released as from the date of the misconduct, unless he has by non-payment of the money, or otherwise, conduced to the woman's fall.

Expenses and Enforcement of the Order.

171. In all cases of summons, whether on application for an order, or for the enforcement of an order, and in cases of warrants for the enforcement of an order where the husband is within the jurisdiction of the court issuing the warrant, there appears to be no practical difficulty as to fees or expenses. Such fees and expenses are very small, and the court has power to remit fees (14 & 15 Vict. c. 55. s. 12), and we understand the court does remit fees in proper cases. The fees and expenses are payable by a respondent husband, and are enforceable against him. It would seem that, if they cannot be recovered from him, they are technically payable by the applicant, but payment is not enforced.

It has been stated that the fees in different courts are not uniform. (*See* the evidence of Mr. Simpson, C.B., of the Home Office, 40,720 *et seq.*) We would suggest that the fees in the cases, which we are considering, should be placed upon a uniform basis, as was apparently contemplated by the establishment of a model table of fees in use at the Home Office, which, as far as we can gather from Mr. Simpson's evidence, has been adopted where the necessity for revision has arisen, but does not seem yet to have been applied to the tables which came into force before 1848.

When, however, a warrant for the arrest of a husband has to be executed, outside the district in which it was issued, a difficulty as to expense may arise; in some places the police do not execute such warrants, unless the wife provides the cost of bringing the husband back to the place at which the warrant was issued. (*See* Mr. Simpson's evidence, 40,759.)

172. It is perhaps outside the scope of this Commission, but we think the duties of the police, as to executing warrants outside their districts without requiring previous payment of expenses, should be more clearly specified. A recommendation of the Select Committee on Bastardy Orders, 1909, was made "that it should be made "clear that the police are bound to enforce warrants of distress or committal "cutside their districts, without requiring the previous payment of costs." (*See* Report of the Committee, paragraph 11, on p. v.)

We understand that the police are bound to execute warrants within their districts, without requiring expenses to be previously paid; that they *may* execute warrants outside their districts, and charge the expenses on the police fund; but that

they *must* execute warrants outside their districts, without previous payment of expenses is, as we gather, not admitted by all chief constables. The difficulty usually arises in the case of warrants for semi-private claims. For instance, the police of Carlisle might object to execute a warrant for the arrest of a man in Penzance, who owes 2*l.* on a bastardy order, at a cost of 6*l.* or 7*l.*, and sometimes an objection is raised.

If all warrants, in the cases with which we are concerned, were executed within the district or outside the district in which the warrant is issued, without (if the court of summary jurisdiction so orders) demanding previously the cost of execution of the warrant, no difficulty in the way of a poor applicant would be felt.

173. It is possible, however, to lessen the cost of executing a warrant in a district outside that in which it is issued, if the suggestion made by some of the witnesses were adopted, namely, that the respondent might be dealt with, without the necessity of bringing him before the court to which the wife applies for process for non-payment of the maintenance money. (*See* the evidence of H. Gough, 3270 *et seq.* and 3333 *et seq.*, and of Major Pulteney Malcolm, 9854–6 and 9945 *et seq.*) There are, however, some practical difficulties in the way of this being done, which we think could be overcome in the following manner.

It would be possible, where the maintenance money has been ordered to be paid to an officer of the court, to send the warrant for the arrest of a husband to the place where the husband is staying, and, the warrant being backed there, for the husband to be brought before the court of summary jurisdiction at that place.

There might also be a provision that a declaration, under the hand of the said officer of the court, certifying (1) the date of the order, (2) that a copy of the order had been served on the husband, (3) the amount owing under the order, (4) the dates and results of previous applications for payment, whether by summons or warrant, should be made evidence of the facts contained in such declaration until the contrary were proved; and the handwriting of the justice issuing the warrant might also be proved by the declaration (sec. 41 of the Summary Jurisdiction Act, 1879). Even then it would be necessary to prove the identity of the man arrested with the person named in the warrant, and, if the man arrested chose to deny the fact or refuse to answer, there might be no evidence of identity, and the attendance of someone from the place where the warrant was issued would become necessary.

It is said that there would also be difficulties in the way of sending the man to prison, if he denied the statements contained in the above-mentioned certificate, and the proceedings might often fail to attain their object in consequence. But it may be observed that, in enforcing orders against debtors under the Debtors Acts, no practical difficulty is found in dealing with a debtor outside the jurisdiction of the court making the order. The warrant is executed by the bailiffs of the court of the district where the man is, and he is lodged in the gaol there. It should not be necessary to bring the man to the court issuing the warrant, unless the matter could not properly be dealt with at the place of arrest.

This suggestion, if adopted, would, in substance, provide for the bringing of the man up before the court of summary jurisdiction of the district where he is arrested, on such certificate as aforesaid, and for sending him to gaol there, and, in case of a dispute, for sending him, at the expense of the county or place where the warrant was issued, to the court there for committal.

To meet any possible difficulty, where the husband is outside the jurisdiction of the court to which the wife makes application for a warrant for his arrest for non-payment of maintenance money, and she has no means reasonably sufficient to enable her to meet the expense of a warrant and its execution, the Guardians should have power to apply for and meet the expenses of a warrant on her behalf, without the necessity of her becoming chargeable. At present, if the wife is unable to recover her maintenance money through lack of means, she becomes chargeable in many cases.

174. With regard to further means of enforcing payment of the maintenance money by making orders on employers to pay part of the husband's wages to the wife, we have had communications from a number of large employers of labour, copies of which will be found in Appendix XXIV., pp. 155–62. We think that power should be given to the court, in its discretion, to make an order, but that the order should merely authorise the employer to pay the amount ordered to be paid out of the husband's

wages, and that the employer should be at liberty to assent or decline to act on the order, and, if he assents, should have a good discharge by payment according to the order.

We understand that in Scotland there is power in similar cases to make an order which must be acted on when the wages of the husband exceed 20*s.* a week (*see* Lord Salvesen's evidence, 6743), and the Select Committee on Bastardy Orders, 1909, recommended that power should be given to enforce payment of bastardy orders by attaching a portion of the defendant's income, such as wages or payments made periodically to him, but we do not consider a compulsory order advisable, as it might lead to the dismissal of the employee.

We recommend that the person to whom the money is ordered to be paid may, by leave of the court, on default in payment by the respondent, have power to serve a copy of the order of the court on the employer of the respondent, who may assent to discharge the order out of the respondent's wages, and payment made to the person aforesaid of the amount ordered, or a part thereof, shall be a good discharge of the employer and of the order *pro tanto*.

175. The Children Act, 1908, s. 75 (11), provides, with regard to the enforcing of orders on parents to pay contributions to the support of their children in Industrial or Reformatory Schools that—

> "any court making an order under this section for contribution by a parent or other such person may, in any case where there is any pension or income payable to such parent or other person and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, further order that such part as the court may see fit of the pension or income be attached and be paid to the person named by the court. Such further order shall be an authority to the person by whom such pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to such first-named person."

We recommend the adoption of a similar provision in separation cases; but we would suggest that, in framing a provision for separation cases, it should be made clear that it is not to extend to wages.

176. At present an order for the payment of maintenance is not enforceable before the expiration of one month from the date of the order, and there is unanimity on the part of the witnesses who have mentioned the matter that an amendment of the Summary Jurisdiction Acts in this respect should be made. Most of them suggest that an order for payment of maintenance should be enforceable after seven days. We think this suggestion should be adopted. Women left without means, and requiring payment of maintenance for themselves and children, should not be required to wait a month, before they can enforce payment.

177. Some witnesses have suggested that justices should have discretion to order imprisonment with hard labour for non-payment of maintenance money (*see* the evidence of Mr. Brough, 7789; Mr. Barradale, 8844). It would be of advantage if this power were given.

178. On this question of enforcing orders, it is to be observed that its object is not so much to punish offenders as to provide money for the maintenance of the wife and children. Having regard to the difficulties of providing effective compulsion, the jurisdiction should be exercised with discretion.

179. With regard to a suggestion which was made that an order for maintenance of a wife and the children of whom she has custody, might be enforceable by the officer of the court to whom payment is to be made, we think that the order should be enforced on the application of the wife, since she is the person who best knows the circumstances of the husband, and whether it is reasonable or advisable to press him for payment at any particular time.

180. In cases where a husband improperly attempts to force himself on a wife, who holds a separation order, or fails to comply with an order for maintenance, although

he is able to do so, and yet insists on remaining in the house with her, a power should be conferred upon the court to order his ejectment, and on the police, under the direction of the court, to carry it out.

181. The court should also have power to impose a penalty on a husband who, after an order that his wife shall not be bound to cohabit with him, enters the house where she lives and refuses to leave.

Separation Deeds or Agreements.

182. At present if a husband fails to make the payments due under a separation deed or agreement, the wife has to enforce payment by action, with the necessary expense and delay. She cannot proceed before a court of summary jurisdiction, because the parties have separated by agreement, and she is not able to charge an offence under the Act of 1895. Suggestions for remedying this state of affairs have been made by some of the witnesses.

183. When this difficulty arises among the poor, a more speedy remedy than that by action is desirable. Where there is default in payment under a deed or an agreement for payment of a sum of 2*l.* or less weekly, and the wife desires to maintain the deed or agreement, and to obtain payment pursuant to it, she should be allowed to apply to a court of summary jurisdiction for an order for payment pursuant to its terms, and the court should be empowered to make such order, and to enforce it in the same way as an order for maintenance, the respondent being at liberty to answer the application on any ground which would afford an answer to an action.

184. It would be an advantage, if the wife were also at liberty to take the following course, whether there had been an order to enforce the agreement or not, viz.: If default be made in payment of two or more consecutive instalments, under a deed or an agreement for payment of a sum of 2*l.* or less weekly, or an order enforcing it, she should be allowed to apply to the court to treat the deed or agreement as at an end, and to find that the husband has been guilty of desertion from the date of the first default; and the court should be at liberty to order and find accordingly, and to make an order for maintenance, &c. on the ground of desertion, unless in their opinion reasonable excuse for the default was shown. The respondent should have liberty to answer the application, by proof that he had reasonable cause for leaving the applicant, apart from the agreement of the parties, or by any other ground of defence, which would be open on an ordinary application on the ground of desertion.

From the date of such order, the respondent would be deemed to have been guilty of desertion for the purpose of any future proceedings in the High Court, or elsewhere.

This course would simplify the position with regard to any further proceedings, and would enable the court to vary the amount to be paid within the limit of 2*l.* weekly, although the deed or agreement was for payment of less than 2*l.* weekly.

185. Cases of larger amounts should be dealt with by the High Court, as we shall hereafter recommend (p. 137), and we shall also make some further suggestions, with which it will be more convenient then to deal.

Custody of Children.

186. The power to order custody should include power to order access and power to order payment of separate sums for the maintenance of the child or children, if any. Power is also required to enable the court to commit the children to the custody of a person or persons other than either of the parties. Such person or persons should have power to enforce payment of the amounts ordered to be paid for the maintenance of those committed to his or her or their charge. Sometimes it is to the best interests of the children that some relative or friend should have the custody, and there should also be power to send the probation officer to look after them, as in cases under the Children Act of 1908 relating to cruelty to children.

The total of the payments for wife and children should not exceed the limit aforesaid, namely, the weekly sum of 2*l.*

187. It is not uncommon for one of the parties, in disregard of the order for custody, to take away one or more of the children, the custody of whom has been given by the court to the other party, and at present there is no summary remedy for this. The court should have power to commit the offending party, until the order is obeyed, and to inflict a penalty for the disobedience of the order. Bearing in mind the class of people affected by these orders, we think the court should have power to direct an officer of the court to take possession of, and hand over to the party entitled to the custody, the child or children taken away, and should also have power to authorise the police to assist the officer.

188. On this subject, although it is not within the scope of our inquiry to consider the question of powers to be exercised locally with regard to the custody of children, apart from divorce and matrimonial suits, or applications for separation or maintenance, we think that if local sittings of the High Court be established for divorce and matrimonial cases, it seems worthy of consideration whether such courts might not have included in their jurisdiction, power to make orders as to custody in proper cases, independently of questions as to separation and divorce.

Habitual Drunkenness.

189. Some witnesses have suggested that in an application for separation on this ground, there should be power to commit compulsorily to an inebriate reformatory. There is already the power above stated under the Act of 1902 to commit a wife, with her consent, to a retreat under the Inebriates Acts, 1879 to 1900. We think it would be an advantage in the interests of the parties, their children, if any, and the State, if this power were extended to permit of compulsory commitment both in the case of husband and wife, as the case may be, in the former case on the application of the wife. There is a difficulty about means. We deal with this subject more fully in a later part of this Report (p. 108).

Separate Courts for Separation and Maintenance Cases.

190. It has been suggested that it would be advantageous if these cases were heard under the same conditions as cases heard in "Juvenile Courts" under the Children Act, 1908, sec. 111, more especially as children are so directly concerned in the exposure of the conduct of their parents, and these cases as a rule are of no public interest. On the other hand, this last fact may tend to show that no great harm to the public is done by open public hearings of those cases, because they are not of sufficient interest to be listened to or reported. Many of them arise out of assaults on wives, which will be heard in public under the criminal jurisdiction before the separation summons, and many of them do not involve details of sexual immorality, because adultery is not a ground of application, though it is a ground of defence or of cancelling an order. We deal fully hereafter with the question of the hearing and reporting of cases in the High Court (p. 145 *et seq.*), but, whatever course may be adopted with regard thereto, we think it would be desirable that the magistrates and justices should have power to close the court in any case in which they think proper to do so, in the interests of decency, morality, humanity, or justice. It may be that this power exists at present, but, to make matters free from any uncertainty, we think it should be expressly recognised.

It would be desirable that the plan adopted by certain benches (*e.g.*, Liverpool), of special sittings for these cases should be adopted, so far as possible, and that the justices taking the cases should be of experience therein.

Further Powers in Cases of Desertion.

191. In cases where the wife does not know where her husband is to be found, and the issue of a summons has resulted in no service being effected, the magistrates and justices should be given power to issue a warrant for his arrest. In this case also power should be given to the Guardians, as suggested above, to apply for and bear the expense of execution of, a warrant for the arrest of the husband, without the necessity of the wife becoming chargeable (*see* Mr. Brough's evidence, 7784). Power to the magistrates and justices to imprison the husband for desertion, should be left to the Guardians to deal with, under the Vagrancy Acts as at present.

Limitation of Time.

192. Proceedings under the Summary Jurisdiction Acts have to be taken within six months from the occurrence of the acts complained of, and instances of hardship in the strict application of this rule to cases of separation and maintenance have been pointed out. We think, however, that in order to prevent delay and stale claims being made, it is desirable to preserve this rule in these cases subject to this modification, that the court should have power, in their discretion, to extend the limit.

Note of Evidence and Hearing.

193. There should be a statutory duty on the clerk to the magistrates or justices to take a full note of the evidence given at the hearing of the application, of the decision of the court, and of the reasons of the magistrates or justices for the decision, and upon the magistrate or justices to give the reasons for the decision. At present there is no distinct statutory duty to this effect, and great inconvenience has at times been found in the Divisional Court from the want of such a note and reasons (*see Wenham* v. *Wenham* (1906), 95 L.T. 548; *Barker* v. *Barker* (1905), 74 L.J. (N.S.), P. 74; *Cobb* v. *Cobb*, L.R. [1900], P. 145; and *Robinson* v. *Robinson*, L.R., [1898], P. 153). Since the expressions of opinion in those cases, we understand that the notes and reasons have been generally sufficient. Either party should be entitled on application to the clerk, to be supplied, without cost, with a copy of the notes, and the Statute should so provide.

Right of Reply.

194. It seems to be considered that the applicant has not a right of reply, as the proceedings are under the Summary Jurisdiction Acts. Applications for separation and maintenance are civil in character and not criminal, and it is clear that the applicant should have a right of reply and that the hearing should be conducted in the same way as the hearing of a civil suit, and any amendment necessary to effect this should be made.

Particulars.

195. The summons should specify the relief claimed and the acts on which it is founded, with enough particularity to let the respondent know what he or she has to meet.

It would be an advantage if the respondent were obliged to give notice of any defence other than a denial, but in dealing with the class of persons for whom this procedure exists, it is important not to introduce any unnecessary formalities which might be overlooked, and the power of adjournment prevents advantage being taken of surprise.

If, however, the respondent relies on the adultery of the applicant as a defence, notice of such defence should be given, or, if not given and yet set up at the hearing, an adjournment should be granted, if required. If a respondent seeks to discharge an order, the summons for the purpose should specify the grounds, and sufficient particulars of the acts complained of.

No application for further particulars should, in any case, be allowed. This is a fruitful source of the expense of proceedings in the High Court, and should be met by adjournment if necessary, which would probably seldom be the case, as the parties are usually well aware what are the points at issue.

Notice to Third Party.

196. A party alleging adultery against the other with another person should be required to give such person notice of the proceedings, unless the court dispense with this, for sufficient reason. Great injustice may be done, if charges of adultery are made and heard, without a person who is implicated therein having a chance of being heard. The party served should have a right to appear and defend himself or herself against the charge.

Evidence as to Amount of Earnings.

197. There should be a provision, similar to that in the Children Act, 1908, sec. 124, making a written statement, signed by or on behalf of the husband's employer, *primâ facie* evidence of the amount of the husband's wages.

Corroborative Evidence.

198. It does not seem necessary to introduce legislative provisions on this head, rules as to which are rules of common sense. If the magistrates and justices follow the rules which guide the High Court, there will be no difficulty, and, if they do not, the matter is one for appeal.

Appeal.

199. It might be convenient to the class of persons for whom legislation is recommended, if appeals were heard before the District High Court Commissioner, but appeals in these cases are rare, and it is an advantage that one tribunal should take them all, as is done at present by a Divisional Court of the Probate, Divorce, and Admiralty Division. There would be no difficulty about them, if the system of assigning solicitor and counsel, which we recommend hereafter for the cases in the High Court, were applied to these appeals in pauper cases.

As to Limitation of Amounts.

200. It was suggested that a court of summary jurisdiction might have power to make a larger allowance than 2*l.* weekly, but we are not in favour of the suggestion. We think that, with the suggested scheme of local tribunals, effective and economic means can be afforded of enabling persons, who are entitled to bring cases in the High Court and obtain alimony or maintenance, to make application to that Court for such alimony and maintenance, in accordance with the practice of the Court. Under the amendments which we propose, the High Court will have additional powers to deal with maintenance, as hereafter stated (p. 123), but parties should not be allowed to apply to the High Court without its leave, if the applicant claims maintenance not exceeding 2*l.* weekly, and the case be one within the jurisdiction of a court of summary jurisdiction, and applications to the district courts should be confined to persons whose means are limited, as we have stated in the previous part on local courts (p. 63). These matters can be most conveniently dealt with by rules of court, as already explained.

PART XIV.

QUESTION V.—SHOULD THE LAW BE AMENDED, SO AS TO PLACE THE TWO SEXES ON AN EQUAL FOOTING, AS REGARDS THE GROUNDS UPON WHICH DIVORCE MAY BE OBTAINED?

Present State of the Law.

201. The law at present permits of a man obtaining a divorce on the ground that his wife has, since the celebration of the marriage between them, been guilty of adultery, but a woman cannot obtain a divorce merely on the ground of her husband's adultery. She can only do so in the following cases, that is to say, where her husband has been guilty of—

(1) Incestuous adultery,
(2) Bigamy with adultery,
(3) Rape,
(4) Sodomy or bestiality, or
(5) Adultery coupled with—
  (*a*) such cruelty as without adultery would have entitled her to a divorce *a mensâ et thoro*; or
  (*b*) desertion, without reasonable excuse, for two years or upwards.

It is important, at the outset of the consideration of the question, to ascertain how the difference between the case of the man and that of the woman arose.

Historical.

202. For this purpose it is not necessary to examine the early history of marriage, which will be found fully investigated by Mr. Westermarck in his work, "The History of Human Marriage" (*see* especially pp. 523–29, 2nd edition). The relative position of men and women, in certain of the early periods of history, is given in the notes by Mr. de Montmorency (Appendix I.).

Women in England and elsewhere have been gradually emerging from the position they occupied in times when a wife was looked upon almost as her husband's chattel, and marriage was a matter of purchase; and when the husband's rights were far greater than the wife's.

It may, however, be observed that there are passages in the Early Fathers unequivocally asserting the equality of the moral obligation imposed on both sexes: that similar views had been expressed by Aristotle, Plutarch, and Seneca*; and that, in theory at least, this doctrine was recognised as a legal maxim by Ulpian: "Periniquum enim videtur esse, ut pudicitiam vir ab uxore exigat, quam ipse non "exhibeat."†

Christianity recognised the broad principle of the equality of the sexes in their personal relations.

The Ecclesiastical Courts granted divorces *a mensâ et thoro* on the same grounds to husband and wife: and, as the High Court of Justice is directed by the 22nd section of the Act of 1857 to give relief in all cases, other than proceedings to dissolve a marriage, on the principles of the Ecclesiastical Courts, there is, in this country at the present day, an equal right for husband and wife to proceed to enforce a suit for judicial separation on the ground of adultery, whether such adultery consist of a single act or more.

But however much these principles were recognised in theory and in the practice of the Ecclesiastical Courts, it cannot be maintained that popular sentiment, at any rate among men, was in accord with the principles of the churches. Those familiar with the history of morals and the literature of past days will acknowledge that there has been a great difference in the censure which has been passed upon men and women, and that seduction and immorality in men have been looked upon with comparative leniency, while similar conduct has been treated as infamous in the case of women.

Practice as regards Private Acts.

203. We have shown how, and in what circumstances, the extraordinary procedure of dissolving marriages by private Acts of Parliament was adopted, and carried on, until the year 1857. A Divorce Bill could be carried through, almost as a matter of right, at the suit of a husband on the ground of his wife's adultery, and when he himself

* Lecky's "History of European Morals," 10th ed., Vol. II., p. 313.
† Just. Dig. lib. XLVIII., V. 14 (13) Ed. Th. Mommsen, Vol. II. (1870), p. 808.

was of proper conduct, but a wife could not obtain the passing of a Divorce Bill except in cases of aggravated enormity. This practice dates from a time when the attitude of the sexes towards each other was different from that which obtains to-day, and that practice was followed with English adherence to precedent till 1857, and is still embodied in the Statute of that year.

204. During the period of private Acts of Parliament, of the large number of Acts passed, only four were in favour of wives. It is probable that questions of title, inheritance, legitimacy, &c., would account for more Bills being launched by men than by women, but we must look to the tone of society for the remarkable difference in the treatment of the two sexes. The Divorce Commission of 1850 state in their Report, in 1853, that, in two of the four cases just mentioned, the adultery was incestuous; in the third, there was profligacy, deceit, abandonment, and the grossest injury done to women which villainy could inflict; and in the fourth, there was bigamy. For the reasons given by the Commissioners for this difference in treatment, we may refer to paragraph 40 of their Report. Without taking any general evidence upon the point, they appear to have been satisfied with the correctness of the opinion of Dr. Johnson, which they quote as a just observation, that "the difference "between the adultery of the husband and of the wife" (socially speaking) "is "boundless."

205. They appear to have been largely influenced by the view that the fault on the part of the woman is worse than that on the part of the man, because her fault may introduce spurious offspring into the family, and also by the impression that a woman may more readily be expected to forgive an adulterous husband than he can be expected to do if adultery be committed by the wife.

But the position of women has entirely changed since the days when the practice of private Acts of Parliament prevailed; and views expressed and acted on in the 17th and 18th centuries are no longer entertained. If adultery be an offence, modern thought proscribes it equally in man and woman, and declines to credit the idea that a man ought in duty to be less forgiving than a woman. As to the effect on the family of adultery on the part of the man differing from that of a woman, it has to be remembered that, if we consider the matter in its public aspect, and not solely with reference to the particular husband and wife, though the act in a man may not affect his own family, it may affect some other family, and that the wife, while she cannot obtain a divorce, has power to leave her husband, and obtain a judicial separation from him. If a woman is to be expected to forgive her husband, and is not allowed to obtain a divorce from him because she ought to forgive him, an extraordinary position results. The situation is treated as meriting legal relief, and a power is left to her, at her discretion, to punish him by inflicting upon him enforced celibacy, with the result that she has to elect between her own lifelong disuse of her natural functions and the condonation of the offence of her husband, which may have amounted to continuous sexual intercourse with another woman.

There is another curious inconsistency in the present state of the law. Rape is an offence for which a woman may obtain a divorce. The offence against the State is greater than in the case of mere adultery; but the offence against the wife is the same in both cases.

The Act of 1857.

206. The Act of 1857 stereotyped the old views, but efforts were not wanting in the debates to effect a change in the direction of equality. Some evidence in favour of it was given before the Select Committee of the House of Lords in 1844. Sir John Stoddart said (Q. 74): ". . . as matter of principle I do not see, when two persons "come together, and bind themselves by a common oath in the same terms, why "the violation of the oath by one should not be held to be just as good a ground of "dissolving the contract as by the other." The Lord Advocate, being asked (Q. 138) as to whether any inconvenience had been found in Scotland to result from giving the wife an equal remedy with the husband in obtaining a divorce *a vinculo*, said that he was not aware of any inconvenience. Mr. Maconochie was asked: (Q. 36) "Is it your "opinion that marriage ought to be dissolved on account of the adultery of the husband "in every case?—(*A.*) I should certainly say so, speaking generally, from my own "experience in Scotland." (Q. 37) "That, if a single act of adultery on the part of

" the husband can be proved, the wife should have it in her power to dissolve the " marriage?—(*A.*) The same remedy that is given to the husband, I think ought to " be afforded to the wife." (Q. 38) " Is that the general opinion of Scotch lawyers? " —(*A.*) I should say so, decidedly."

When the Bill of 1857 was before the House of Lords, Lord Lyndhurst maintained that the existing state of the law was to demoralise and degrade the lower classes, and urged in strenuous language the equality of the sexes. He referred to Scotland, the Ecclesiastical Law, the Reformatio Legum, and quoted Lord Eldon, Lord Thurlow, and Dr. Lushington.*

In Committee, a motion by Lord Donoughmore to enable a wife to obtain a divorce, on the ground of the adultery of her husband, was rejected by 71 votes to 20.†

In Committee, in the House of Commons, Mr. Drummond moved an amendment having for its object the establishment of the equality of the sexes, but the Attorney-General objected, on the ground that the Bill was to amend procedure, and the law was settled. Mr. Gladstone held that the law was not fixed. He looked on the importation of divorce *a vinculo* as an evil, but if it were to be introduced, he expressed himself in favour of equality:—

> "I believe that the evil of introducing this principle of inequality between men and women is far greater than the evil which would arise from additional cases of divorce *a vinculo*; and I take my stand, in the first place, on this, that, if it be assumed that the indissolubility of marriage has been the result of the operation of the Christian religion on earth, still more emphatically I believe it may be assumed that the principle of the equality of the sexes has been the consequence of that religion. You have in the very earliest times some traces of what approaches to it; but it is the special and peculiar doctrines of the Gospel respecting the personal relation in which every Christian, whether man or woman, is placed to the person of our Lord that form the firm, the broad, the indestructible basis of the equality of the sexes under the Christian law."‡

After arguing as to the position of women, that they are not so impure as men, he proceeded to urge that the measure as framed was assertive of the superiority of man's position in creation. He adopted Lord Lyndhurst's view, and said the proposed change would deter men from commission of offences, which, among husbands, are infinitely more common than among wives. After discussion, the amendment was rejected by 126 votes to 65.

An amendment was moved by Lord John Manners to insert words, which would enable a wife to obtain a divorce for adultery by her husband, committed in the conjugal residence.§ After some discussion, the Attorney-General spoke to the effect stated above (p. 14); but, in the end, Lord Palmerston interposed, and decided not to divide the Committee, and the amendment was thus accepted. When the Bill went back to the House of Lords, the amendment was struck out, on the motion of Lord St. Leonards, by 44 votes to 27,¶ and the reasons given to the House of Commons were that the words were indefinite, would give rise to difficult questions of fact and law, and might lead to collusion. The House of Commons did not insist on the amendment, Lord Palmerston pointing out that it had been resisted by the Government, but carried against them.‖

Equality of the Sexes in Scotland and most other Countries.

207. The result is that, while in Scotland the sexes are on an equality with regard to grounds of divorce, in England they are not. From the evidence of Lord Salvesen, one of the senators of the College of Justice in Scotland, we extract the following passages:—

> "6306. What is the difference in Scotland between men and women?—Absolutely none. They have exactly the same rights before the law."
>
> "6307. Have you found by experience that that has worked well?—I think it has worked very well. Of course, I know quite well there are many reasons alleged why the same law should not apply to husbands as applies to wives, and I quite appreciate the force of these, for physiologically there are differences, and public opinion has always regarded the chastity of men as of less importance than the chastity of women, and even female opinion regards the ante-nuptial

* Hansard, vol. 145, 499 *et seq.* † *Ib.*, vol. 145, 812–14. ‡ *Ib.*, vol. 147, 1272.
§ *Ib.*, vol. 147, 1534. ¶ *Ib.*, vol 147, 2046. ‖ *Ib.*, vol. 147, 2085–7.

incontinence of men in a very different way from that in which it regards the incontinence of women. But for all that, I think in practice our law works extremely well, because we do not find that women as a rule take proceedings against their husbands for what may be called casual acts of adultery, but only where the marriage relation has become intolerable upon other grounds, and I think you will find that borne out by the statistics where a considerable majority of actions of divorce for adultery are at the instance of men, although I think it may be safely inferred there are far more women who are injured in that respect than there are men; and accordingly, in practice, we do not find that the woman rushes into the divorce court if she is on otherwise good terms with her husband, and has regard for the unity of the family, because of a lapse from virtue on his part. At the same time I think she should have the remedy if she desires to exercise it, and that in many cases it operates very much in the direction of promoting public morality."

"6308. Just to get this a little clearer, because it is an important point. Your tables show that the larger number of charges of adultery are at the instance of the husband?—Much the larger."

"6309. Although as you are pointing out, as I follow you, the probabilities are that the husbands have been more unfaithful than the wives?—Yes."

"6310. And therefore if the suit was by the wife frequently taken by the wife on the ground of adultery there would be greater opportunity of taking it than if it was by the husband?—Yes, I should say very much greater opportunity."

"6311. But you do not find that actually done?—No."

"6312. Then in actions of desertion the majority of pursuers are wives?—Yes."

"6313. I will ask about that later on. I should like to get from you how you think the fact that a wife can sue for adultery alone acts as a deterrent?—Well, I think for this reason. If she has no remedy for adultery on the part of the husband, practically it amounts to giving him a licence to commit adultery so long as he does not combine with that cruelty or desertion. He can defy his wife's remonstrances or disregard them entirely. Whereas if he knows that she may dissolve the union and bring him into court it exercises a most powerful deterrent. Not merely that, but the decree of divorce pronounced against the husband operates exactly as his death and the wife is at once entitled to the same share of his estate she would be entitled to when he died."

"6314. What is that in Scotland?—In Scotland if there are children she would be entitled to one-third of his movable estate and a life-rent of one-third of his heritable estate."

"6315. Who takes them otherwise?—The children would at the death of the father, but they take no benefit from the divorce. But if there are no children then the wife takes one-half and a terce which is a life-rent of a third of his heritable estate."

"6316. So if she can institute a case for divorce on the ground of adultery she not only gets free from him but takes a portion of his property?—Yes, and takes half of the movable estate if there are no children."

"6317. And that is a strong deterrent?—Yes."

"(*Lord Guthrie*). And probably she gets the custody of the children."

"6318. (*Chairman.*) I was going to ask one further question. What powers have the courts to decree in such a case as that provision for the children?—Oh, if the wife is awarded the custody of the children, which if she is a successful pursuer, she is *primâ facie* entitled to, she gets an award of aliment for each child she has with her."

"6319. That is in addition to her one-third?—In addition to the share of her husband's estate; but the courts very often divide the children unless the moral character of the father is such as to endanger their upbringing."

"6320. I suppose they have a general discretion in the interests of the children?—They have a complete discretion in the matter; the only thing one can say is the successful pursuer in an action for divorce, whether a man or a woman, has *primâ facie* the right to the custody of the children."

"6321. Well, I need hardly ask you, but you regard the Scotch law as better than the English?—I do."

"6322. Has there been any general indication of feeling in Scotland for a change in that respect?—I have never seen any suggestion to that effect in literature or the public press, though we have had this law in full operation and vigour since 1560 as part of the common law of the country; because it is not statute law—the right of divorce for adultery."

"6323. I see you sum up this point by making a general observation upon it. Perhaps you will kindly tell us what you have to say in general?—Well, I should say, in the first place, that with regard to legal opinion and the opinion of my brethren on the bench, I think I am expressing their opinion on this matter entirely. I have had an opportunity of submitting my proof to the present head of the court, and he authorised me to say that, so far as it deals with matters of opinion, he is in entire accord with it. With regard to the other points, I think that our law conduces very much to the morality of husbands and to the peace of families, because it is much better that an offence against the conjugal tie on the part of the husband should be a matter for forgiveness on the part of the woman than that she should have no remedy for it."

208. In most of the other countries mentioned above, in which divorce is permitted on the ground of adultery, no distinction between the sexes is made. These include Austria (for Protestants), Bulgaria, Denmark, France, German Empire, Hungary (for Protestants, Greeks, and Jews), The Netherlands, Norway, Roumania, Russia, Sweden, and Switzerland. The rule is the same in Cape Province, Natal, New Zealand, and New South Wales, subject in the last two, to certain provisions as to domicil. In the United States of America the sexes are on an equality as regards grounds of divorce.

209. A Bill was introduced into the House of Commons in the year 1892. It was intituled "A Bill to amend the Law of Divorce," and was backed by Mr. Hunter, Mr. Asquith (the present Prime Minister), Mr. Cobb, Mr. Fenwick, and Mr. Herbert Gardner (now Lord Burghclere).

According to that Bill, a wife might petition for divorce against her husband on the ground of adultery alone, and either party might petition for divorce on the ground that the other had been guilty of desertion, without reasonable excuse, for four years and upwards.

The latter point bears on the question of grounds of divorce other than adultery.

The Bill, as we understand, after being read a first time, was not proceeded with.

Consideration of the Principle Applicable.

210. In principle there can be no adequate reason why two persons, who enter into matrimonial relationship, should have a different standard of morality applied to them, and, what is perhaps most remarkable about the difference in question is that it is not recognised as applicable to the right to judicial separation, for either man or woman may obtain a decree of this nature for a single act of adultery. Those who maintain that judicial separation is a greater punishment than divorce are probably right, for the former may inflict lifelong celibacy and with no right of re-marriage, and the latter does not. Thus the punishment, which may be inflicted on a man for a single act of adultery, may be greater than that which may be inflicted in the case of the greater offence of continuous adultery with cruelty or desertion, though the wife might even in the latter case choose to take a decree of separation and not of divorce.

211. Apart from abstract justice the strongest reason for placing the sexes on an equality is that, where two standards exist, there is a tendency to accept the lower for both parties. The social and economic position of women has greatly changed in the last hundred and even in the last fifty years. The Married Woman's Property Act, 1882, has given them a new status in regard to property; they engage freely in business and in the professions, and in municipal, educational and Poor Law administration, and claim equality of treatment with men. In our opinion it is impossible to maintain a different standard of morality in the marriage relation, without creating the impression that justice is denied to women, an impression that must tend to lower the respect in which the marriage law is held by women.

212. In the passage above quoted from Lord Salvesen's evidence, it is suggested that the abolition of the distinction will tend generally to raise the moral tone amongst men. If a man does not combine cruelty or desertion with adultery, he does not subject himself to a suit for divorce, whereas, if he knows that his wife may dissolve the union on the ground of his adultery alone, a powerful deterrent exists against the commission of the offence. It may be said that he is already liable to a suit for judicial separation, but this is a remedy which leaves the petitioner in a most unsatisfactory position, and few suits of this character are now brought.

Nothing has been more striking in our inquiry than the agreement amongst the great majority of the witnesses, who dealt with the question, in favour of equality.

213. Besides the evidence of the witnesses who actually attended before us, a large number of resolutions by the bodies undernoted have been communicated to us. Forty-seven branches of the National British Women's Temperance Association have addressed a letter in similar terms to the Chairman. A copy of this letter, and a list of the branches sending it, are set out in Appendix XXV. D., pp. 167–8, and it will be seen that, in the concluding paragraph, this passage occurs: "For these and "other similar reasons we desire heartily to endorse the weighty opinion expressed "by many eminent witnesses before your Lordship's Commission in favour of making "the legal, no less than the moral, misconduct similar for both sexes." Letters and resolutions in substantially similar terms from 26 other branches of the said Association have also been forwarded to the Chairman, or other Commissioners, in support of a similar standard for men and women. A list of these branches is given in Appendix XXV. D., p. 168.

Resolutions to a similar effect have also been received from the following societies:—

Birkenhead and District Women's Guild.
Birkenhead and District Women's Suffrage Society.
Birkenhead Women's Adult School.
Birkenhead Women's Local Government Association.
Coventry and District Women's Liberal Association.
Glasgow City Branch of the Independent Labour Party.
Liscard Branch of the Women's Labour League.
Liverpool Branch of the National Union of Women Workers.
Liverpool Union of Women Workers.
Manchester, Salford, and District Branch of National Union of Women Workers.
National Council of P.S.A.'s Brotherhoods and Kindred Societies (Women's Committee), Peterborough.
National Women's Labour League—Durham and Northumberland Branches.
Pontypridd and District Women's Liberal Association.
Seacombe Branch of Independent Labour Party.
Wallasey and Wirral Women's Suffrage Society.
Wallasey Socialist Society.
Women's Cottage Guild, Liscard, Cheshire.
Women's Liberal Federation.

Copies of the letters and resolutions will be found in Appendix, XXV. E., pp. 168–71. We have had no evidence of difference of opinion among women on this matter; and we understand that women of all classes and all shades of religious and political opinion are unanimously in favour of equality of remedy in matrimonial causes.

214. Some of the other witnesses, however, do not consider that the husband's adultery should be a sufficient cause in itself to entitle the wife to a divorce, as it is in the case of the husband for the wife's adultery. The general effect of this class of evidence is that these witnesses do not consider that an act of adultery on the part of a man has the same significance as has an act of adultery on the part of a woman, and that an act of adultery on the part of a man may be more or less accidental. This term "accidental" is to be found in the debates in 1857, and was used before us. At the same time, we take the general effect of the evidence of these witnesses to be that, where the husband's adultery is continuous or committed in circumstances of open indignity to the wife, she ought to be able to maintain her suit for a divorce.

215. These views led to strenuous protests, to be found in the letters and resolutions to which we have referred. They are, however, an advance upon the strictness of the terms of the Act of 1857, and might meet many cases not covered by that Act. They do not appear, however, to be founded on any sound principle, and they leave a wife's position open to a variety of difficulties. What is to be understood by continuous adultery? How often would the offence have to be committed, if it were to be considered continuous? What are to be the circumstances which amount to open indignity? One set of circumstances was suggested, that is, adultery in the conjugal residence, but there does not seem to be any substantial distinction between such adultery, for instance, during the absence of a wife, and adultery committed, say, in an adjoining house, or notoriously in the same neighbourhood.

216. There is, in addition to these difficulties, the important point upon which we have had the advantage of the evidence of medical witnesses. In continuous adultery the mistress may otherwise be a pure woman, and, regarded in its medical aspects, the adultery may be a source of no physical danger to the wife. But a single act of adultery, that which might come under the term "accidental" as used in evidence, is, as likely as not, committed in circumstances which give rise to every possible risk of infecting a man with venereal disease, and, by reason of such infection, a wife's health and that of her children may be most seriously affected, or sterility may be produced. It is terrible to read and study the evidence of some of the witnesses as to the extent of diseases of this character, the disastrous effects on men, women, and children, and the appalling amount of suffering occasioned thereby. We refer especially to the evidence of the medical men and women of experience called before us, and might particularly call attention to the evidence of Mr. J. Astley Bloxam, the senior consulting surgeon to the Lock Hospital (40,830 *et seq.*), and Dr. Frances Ivens, honorary medical officer for the diseases of women, Liverpool Stanley Hospital (34,492 *et seq.*).

217. No reference to the subject dealt with in the previous paragraph is, so far as we are aware, to be found in the debates of 1857, and it is only when attention is forcibly directed to it by such evidence as has been placed before us, that its bearing upon the question of the equality of the sexes, and the necessity for every possible step being taken which may tend to place sexual morality upon a higher footing than has hitherto existed, can be properly appreciated, and a sound judgment can be formed as to whether the fact that the adultery of the husband is or is not continuous should make any difference in a wife's legal rights. In such circumstances as are disclosed in the evidence we have just referred to, ought a woman to be expected to forgive, and is it necessarily desirable for her to forgive her husband? This, we have already noticed, has been considered a ground upon which a woman should be in a different position to a man, because it has been suggested, forgiveness is to be less readily expected from a man than from a woman. We have already pointed out that this expectation has never been and is not contemplated by the Legislature as applicable to judicial separation, and it may not unreasonably be asked why it should be contemplated as applicable to divorce. The State, which cannot itself originate proceedings, may well leave all the interests concerned, more especially that of the wife and her children, to her option in the latter case, as well as in the former.

218. We do not overlook the arguments founded on physiological considerations, and the different consequences of immorality in one case and in the other, but it seems to us that those arguments are outweighed by the other considerations presented in this report.

Recommendation.

219. Our conclusion is that no satisfactory solution of the problem, which is raised as to the personal relations between husband and wife, can be found, except by placing them on an equal footing, and by declaring that, whatever grounds are permitted to a husband for obtaining a divorce from his wife, the same grounds shall be available for a wife in a suit against her husband. It may be safely left to a woman to consider whether she will exercise her rights, and it may reasonably be expected that, as has been proved by actual experience in Scotland, physical, social, pecuniary, and other considerations will have their natural effect, and lead to such rights not being exercised, at any rate in the great majority of cases, without such good and sufficient reason as will meet with the approval of relations and friends of the wife.

PART XV.

QUESTION VI.—SHOULD THE LAW BE AMENDED SO AS TO PERMIT OF DIVORCE BEING OBTAINED ON ANY, AND, IF ANY, WHAT GROUNDS, OTHER THAN THOSE AT PRESENT ALLOWED?

Principle.

220. In our opinion, this question is the most difficult question and one of the most important, if not the most important, which we have to consider. The answer to it depends upon whether the principle indicated at p. 37, para. 48, of this Report (which is the only principle upon which the Legislature can properly act) be adhered to. From the State's point of view, the question is whether marriages should be indissoluble, or whether they should be dissoluble on grounds which arise out of human needs. Those needs have various causes. Leaving out theological considerations, adultery has to be considered, not as a peculiar cause, but as one of the few causes which go to the root of the marriage relationship and render joint married life practically impossible. Adultery, after all, is only an example of what Shakespeare, through the mouth of Hamlet speaking to the adulterous queen, (in a passage quoted in the Report of the Royal Commissioners of 1853) calls—

" . . . . such a deed
" As from the body of contraction plucks
" The very soul."

[*Hamlet*, Act III., Scene IV.]

221. The law of England has already permitted the dissolution of marriage on the ground of adultery, and no one has ventured to suggest that a repeal of the present law is within the range of practical politics. The question, therefore, which has to be considered is whether any, and what other, causes than adultery should be permitted as grounds for dissolution.

222. We have already stated that, in our opinion, the State should not regard the marriage tie as absolutely indissoluble in its nature, or as dissoluble only on the ground of adultery, but may regard the dissolubility of the tie as not limited to the ground of adultery, and may allow other grave causes to be added (p. 37).

We proceed to consider whether any causes, and if any, what causes, should be admitted as grounds of divorce, and we state the question thus generally, although we have pointed out that adultery is already recognised by law as a ground.

223. It is recognised by the western nations and by those sprung from them, that, even if there is no law of nature which dictates that the union of man and woman should be monogamous, a monogamous union is that which best promotes the interests of humanity, and, as the Chairman points out in his Notes (Vol. III., p. 545, para. 119) this recognition has been intensified by the influence of Christianity.

It is further recognised, as a natural consequence of a monogamous union, that it is for the best interests of the parties, their children and the community, that such a union when once formed should be continuous. It is not regarded as an ordinary simple contract in which no one is concerned except the parties, and it is considered that it ought not to be put an end to at their will. The children of the marriage, whose procreation, upbringing, education, and maintenance are among its primary objects, are interested in the maintenance of the status of their parents which is created by it. The community in general is interested in its citizens maintaining proper standards for themselves, and especially in their bringing into existence healthy children and maintaining and educating them, and in the maintenance of that family life which results from marriage and is the foundation of society. It is recognised that the incidents of the relationship created by marriage should be regulated by the State, and that its continuance should not depend on the will of the parties, but should only be determined by the same authority.

224. Certain grave causes have already been recognised in England as elsewhere, as putting an end *de facto* to married life, and as entitling, or even compelling, reasonable and right thinking persons to take legal action accordingly, in their own interests and in the interests of their children.

One of these causes is adultery, which prior to 1857 was recognised as giving a right to obtain by Act of Parliament a divorce *a vinculo* and, through the law Courts, a divorce *a mensâ et thoro*, and since that date has been a ground not only for judicial

separation, but for judicial dissolution of marriage, without any further ground, in a suit against a wife, and, with certain aggravating circumstances, in a suit against a husband.

Cruelty has been and is recognised as another of these causes, but the remedy which has been hitherto applied is the remedy, adopted from ecclesiastical principles, of permanent separation, without a dissolution of the marriage tie.

Further, the Legislature has recognised that, wilful desertion for two years and upwards, and habitual drunkenness, in fact put an end to joint married life, but has provided, as the only remedy, that the parties shall be permanently separated without a dissolution of the marriage tie. Thus, in three cases, namely, wilful desertion, cruelty, and habitual drunkenness, the State has recognised the right of the injured person to permanent separation from the offender.

But the true question is whether the remedy of judicial separation is adequate in such cases; and if other causes produce the same *de facto* termination of married life, the question in these cases also is whether a remedy by judicial separation is adequate, or whether the more extended remedy of dissolution of marriage should not be available for the injured spouse.

Judicial Separation.

225. It seems necessary to consider first the remedy by decree of judicial separation. It was substituted for the old decree of divorce *a mensâ et thoro* by the 7th section of the Act of 1857, and, in addition to the grounds on which that decree could be made, was applied to desertion without cause for two years and upwards. By the decree, the parties to a marriage are separated, but the tie of marriage is not dissolved. The separation is permanent, unless both parties agree to put an end to it. The wife is considered from the date of the sentence, and whilst the separation continues, as a *feme sole* as regards property she may acquire, &c., also for purposes of contract, &c., (Act of 1857, ss. 25 and 26); orders, for alimony to a wife and as to custody, maintenance, and education of children, may be made.

226. Divorce *a mensâ et thoro* (for which the term judicial separation is now substituted) was granted by the Ecclesiastical Courts. It places the parties in a position in which, while they remain married, they are subjected to enforced celibacy. Such separation has been frequently and strongly condemned, as inadequate to meet the situation, and as productive of immorality, and misery to the parties, both the innocent and the guilty, and detrimental to the interests of the children.

227. Divorce *a mensâ et thoro* is condemned in the 19th Article of the Reformatio Legum, under the head De Adulteriis et Divortiis: "since this practice is contrary "to the Holy Scriptures, involves the greatest confusion, and has introduced an "accumulation of evils into matrimony . . ."

In the 17th century we find, in Bishop Cozens' argument in Lord Ross's case, quoted in the Duke of Norfolk's case, the following passage* :—

> "The distinction betwixt bed and board and the bond, is new, never mentioned in the scripture, and unknown to the ancient church; devised only by the canonists and schoolmen in the Latin church (for the Greek church knows it not), to serve the pope's turn the better, till he got it established in the council of Trent; at which time, and never before, he laid his anathema upon all them that were of another mind; forbidding all men to marry, and not to make any use of Christ's concession."

Mr. Bishop, in section 68 of his book on "Marriage, Divorce, and Separation," before mentioned, says of judicial separation :—

> "This proceeding, neither dissolving the marriage, nor reconciling the parties, nor yet changing their natures; having, at least, no direct sanction from Scripture; characterized by Lord Stowell as casting them out 'in the undefined 'and dangerous characters of a wife without a husband, and a husband 'without a wife'; by Judge Swift" [an American judge] "as 'placing them 'in a situation where there is an irresistible temptation to the commission 'of adultery, unless they possess more frigidity or more virtue than usually 'falls to the share of human beings'; by Mr. Bancroft," [the historian of the United States] "as punishing 'the innocent more than the guilty'; by an English writer, [Macqueen]" as 'a sort of insult, rather than satisfaction, to

* 13 How. St. Tr. 1334.

'any man of ordinary feelings and understanding,'—is, while destitute of justice, one of the most corrupting devices ever imposed by serious natures on blindness and credulity. It was tolerated only because men believed, as a part of their religion, that dissolution would be an offence against God; whence the slope was easy toward any compromise with good sense; and as the fruit of compromise we have this ill-begotten monster of divorce *a mensa et thoro*, made up of pious doctrine and worldly stupidity"

He then cites the passage from Bishop Cozens above quoted, and proceeds:—

"Yet in the face, not only of this testimony, but of all opinions not moulded by theological dogma, [in] Protestant England, and a large proportion of the States of this country where the tenets of no particular religious sect pervade our legislation, this divorce from bed and board, termed in the modern English statutes judicial separation, this nuisance in the law, is suffered to stand unquestioned!"

228. It would be too long a process to quote all the writers and authorities, and all the witnesses before us, who have supported the views thus expressed, but we may refer to the evidence of Mr. Justice Bargrave Deane, who, speaking of separation, said (873): "I would not have separation. It is a living death—that is "the way I look on separations. It is wrong altogether. Either they must live "together or live apart, and that means be divorced." The learned Judge appears to have been speaking in this passage of permanent separation, where the causes of separation would afford grounds for divorce. It is to separations which will in all probability be permanent, and not to temporary separations for immediate protection, that the objections apply. In the latter it may be reasonable to hope that the parties may rejoin each other, but in the former this result cannot be expected and rarely takes place.

229. We further refer to the remarks of the Hon. Henry B. Brown, ex-justice of the United States Supreme Court, in an address delivered before the Maryland State Bar Association, and reported in "Law Notes," Vol. XIII., No. 7 (published at Northport, New York, U.S.A., 1909). Speaking of divorce, *a mensâ et thoro*, he said—

"A situation more provocative of temptation and scandal cannot be imagined. For the former relation is substituted a marriage which is not a marriage—a celibacy, an amphibious existence which places the strongest instincts of our nature under a bann and deprives both parties not only of the companionship of the other sex, but of the comforts of a home life. A legal separation is, in fact, a punishment, rather than a remedy . . ."

Some of the passages above quoted were referred to by Mr. John Arthur Barratt, who was asked this question (16,752):—

"How far do you think that represents the views of the people in America?"

His answer was:—

"I think that would be the general view adopted by most people of any standing, that there is no good purpose to be observed by keeping people tied together for ever during their lives without the possibility of re-marriage, if they are never going to live together again."

230. Lord Salvesen refers to two Scottish legal authorities, and adds his own view:—

"6359. What is the general view in Scotland with regard to the way in which these grounds of divorce are looked upon?—They are favourably commented upon by all our leading institutional writers, and Lord Fraser says on page 1141: 'The conjugal relation has stood not less, but infinitely more secure 'and sacred, since separations *a mensa et thoro* for adultery, which were 'extremely common under the Popish jurisdiction, fell into total disuse; and the 'number of actions for divorce *a vinculo* has, in proportion to that of the 'population, remained nearly the same at all periods since the Commissaries 'were first appointed in 1563, down to the present time.' And another authority on the law of husband and wife, Professor Walton, says, 'Public 'feeling is strongly against increasing the number of persons living as if 'single, and yet not free to marry: husbands without wives and wives 'without husbands.' I think these authors have expressed what is the

ordinary view in Scotland, and what seems to me to be consistent with common sense."

"6360. What does your own experience lead you to as a conclusion about separation without dissolving the tie of marriage?—I think they invariably lead to the persons just leading their own lives and not having any regard for chastity at all. I think when you deal with a large body of the population, if a man (because it is nearly always in cases of separation and aliment that the action is instituted by the woman) is turned out of doors, so to speak, he consoles himself with other female society."

231. A great number of the witnesses, including even those who are opposed to divorce entirely, have pointed out the disastrous results that arise from permanent separation without divorce. Typical of this class of evidence is that given by the Rev. John Scott Lidgett, Ex-President of the Wesleyan Methodist Conference and warden of the Bermondsey Settlement, who appeared on behalf of the Wesleyan Methodist Committee of Privileges. Speaking of separation orders, he says (39,720):—

"I should like to add that all those with whom I have to do are greatly opposed to the disability of the poor with regard to obtaining divorce, on the ground of the immoral consequences of separation orders. Our experience is that separations lead to the formation of irregular unions, and that it will be far better where the cause of divorce exists, which is allowed in the case of the rich, and in the interest of morals, that the poor should have the relief of divorce rather than of mere separation."

232. Although the following passage from the evidence given by Mrs. Steinthal, on behalf of the Mothers' Union, bears more directly upon the question of separation orders, it is of importance on the matter now under consideration. In the memoranda of evidence (put in by her) collected by the Mothers' Union from officials, &c., there is the following question No. 4 (*see* 17,100): "What have you found to be the "moral effect of separation orders (*a*) in the case of husbands; (*b*) in the case of "wives?" The following are the answers:—

"*Durham* (Durham):—(*a*) Immorality; (*b*) Ditto. *Essex* (Colchester):—In my experience I have nearly always found that the man and woman live in sin afterwards. *Hereford* (Hereford):—Bad in every way. (Hereford):—(*a*) Bad; (*b*) Not so bad if man pays. *Hertford* (Bishop's Stortford):—Misconduct in both cases. *Hampshire* (Aldershot):—Difficult to answer, but should say that the immorality, if any, commences before the separation act. *Kent* (Maidstone):—In some instances the husbands are living good lives and the wives are not. In other cases it is the opposite. *Lancashire* (Burnley):—(*a*) Bad; (*b*) Bad. (Manchester):—(*a*) Bad; immorality in majority of cases; (*b*) Good in majority of cases. The order protects the wife and she is often able to keep herself and family respectable. (Manchester):—Bad in both cases, though more invariably so as regards the husband. (Stretford):—I do not think so bad for woman as for man. *London* (Belgravia and Pimlico):—(*a*) Immorality; (*b*) Morality, so far as my experience goes. (Wimbledon):—No experience. (Clapham and Upper Tooting):—Not good in either case. (Piccadilly):—Varied; sometimes salutary. They find that after all they cannot get on without each other, and when they get over their temper are glad to make it up. (Battersea):—(*a*) Immorality; (*b*) the same in some cases, and in others starvation. (Putney):—(*a*) Another woman; (*b*) sometimes living with another man, but never a good woman. *Nottingham* (Nottingham):—Sometimes disastrous to both, but more often in the case of the man. *Wiltshire* (Salisbury):—(*a*) They lose sense of responsibility; (*b*) ditto. (Winchester):—(*a*) Tends to immorality; (*b*) ditto. *Worcester* (Worcester):—My opinion is that legal separation tends to strengthen the feeling of the marriage tie, as the wife feels husband is bound to support her as long as she remains moral. *Wales—Glamorgan* (Llandaff):—Unless they return after a short interval, each finds new partner. (Cardiff):—(*a*) A lessening of the sanctity of the marriage tie; (*b*) ditto. (Barry):—Bad in many cases owing to the fact that the separation has been forced on the husband or wife, often through drunken habits of partner. *Yorkshire* (York):—(*a*) Immorality with housekeeper; (*b*) destitution causing woman to live with any man who offers a home for herself and children. (Hull):—(*a*) Bad; (*b*) bad. That is all on Question 4."

233. The returns from a number of the magistrates' clerks put in by Mr. J. R. Roberts, Appendix VI., p. 46 *et seq.*, have a question in column 7: "Has it been proved or is "there reason to suppose that the grant of orders of separation leads to immorality?" This question is answered in the negative by the majority of the clerks to whom the questions were addressed; by some in the affirmative; by others that they have no proof, or have no knowledge, or no evidence. It seems probable that the answers by these persons are largely based on applications to set aside orders on the ground of the wife's adultery, which are not very numerous, and do not give the result of experience based on inquiries as to what actually happens to the parties. These answers are inconsistent with the answers made to the Mothers' Union, above set out, and with the evidence of many of the witnesses; *see* especially the evidence of the police court missionaries: T. Holmes (17,829); R. Holmes (18,012, 18,028–9); Joseph E. Bladon (18,148); John Palin (18,219); J. C. Holmes (18,372); W. Lightfoot (18,543–4); H. Ferris Pike (18,648); W. Mundin (18,850–1); F. W. Barnett (19,217); J. Massey (19,390); W. Fitzsimmons (19,503 *et seq.*). *See also* the evidence of Miss J. M. Tooke (19,894 *et seq.*); Miss B. Leppington (19,970); Miss Morton (20,034); Miss E. Lidgett (20,127); all which evidence, based on actual experience, shows how, if separation is continued, unlawful connections are formed on both sides.

234. Our conclusion is that the remedy of judicial separation is an unnatural and unsatisfactory remedy, leading to evil consequences, and that it is inadequate, in cases where married life has become practically impossible.

235. It may be here noted that the annual average of petitions for judicial separation, filed in the years 1906–1910 is only 75·8, and the annual average of decrees of judicial separation granted in those years is only 25·2. For 1910 the number of these petitions filed was 58, and of decrees for judicial separation granted was 22. Probably, in many of the cases, deeds are entered into; and deeds are entered into in a number of cases without suit.* The annual average of petitions for divorce filed is, for the years 1906–1910, 777·8, and of decrees granted 638·8. The number of these petitions filed in 1910 was 755, and the number of decrees granted was 588. For these figures, *see* Civil Judicial Statistics for 1910, p. 29. We have given above (p. 67) a table of the number of separation orders for 1907, 1908, and 1909, among the classes to whom the remedy of divorce is not so accessible as in the case of those in better circumstances.

Dissolution of Marriage.

236. We pass then from our consideration of judicial separation, and, having pointed out the inadequate and unsatisfactory nature of that remedy, we proceed to consider the question of the right remedy.

237. It would not, in our opinion, be possible to recommend the abolition of the remedy of judicial separation, which may be needed in cases where the petitioner does not desire to obtain a divorce and objects thereto, and the respondent does not claim that the decree should be one of divorce. But apart from this, the question may be thus stated: Is it better, while recognising the normal permanency of the marriage bond, to recognise also the deficiencies of human nature and their consequences, and, in the interests of morality and the State and of the parties and their children, to permit of the dissolution of the legal tie where the objects of its formation are frustrated? Or is it better to declare the marriage tie legally indissoluble in every case, notwithstanding the fact that events have supervened upon marriage which have in fact ended the joint life, and notwithstanding that in such circumstances adulterous relations are formed, great suffering and misery inflicted on innocent people and their children, and a general disregard of the law developed, by maintaining a legal tie, when the actual tie has ceased to exist?

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* The annual average of these petitions for the years—

1885–9	was 128·2,	1900–4	was 95·4,
1890–4	„ 104·6,	1905–9	„ 82·6,
1895–9	„ 99·0,	1906–10	„ 75·8,

and of decrees of judicial separation granted, the annual average for the years—

1885–9	was 43·6,	1900–4	was 23·0,
1890–4	„ 29·4,	1905–9	„ 25·8,
1895–9	„ 31·2,	1906–10	„ 25·2.

238. If we start with the fact that the Western world has recognised that the union between man and woman in marriage should, in the best interests of all concerned, be monogamous and that a monogamous union ought to be continuous until the death of one of the parties, yet experience teaches that causes, other than death, do in fact intervene to make continuous married life practically impossible and to frustrate the objects with which the union was formed. We have to deal with human nature as it always has been, and as it is: and it is established beyond all question that for various reasons, amongst others improvident, reckless and early marriages, drunkenness, sensuality, brutality, immorality, lunacy, and crime, many marriages become absolute failures, and married life becomes either morally or physically, or both morally and physically impossible. We have had before us a great body of evidence from witnesses, and a very large number of letters which show that, unless the union formed by marriages which have already ceased in fact can be dissolved in law, lives become hopelessly miserable, illegal unions are formed, immorality results, and illegitimate children are born. This is not adequately understood by those whose lives are passed in happier circumstances; but it will be realised by anyone who reads the evidence laid before this Commission.

239. The great mass of the evidence is in favour of extension of grounds, though there are differences as to what causes should be made grounds. But some witnesses are against any extension, and they may be divided into three classes:—

(1) Those who, on religious grounds, regard marriage as absolutely indissoluble, as, for instance, Roman Catholics.
(2) Those who, on similar grounds, regard marriage as dissoluble only on one ground—adultery.
(3) Those who are adverse to extension of grounds, not on any religious principle, but for social reasons, that is, that any extension of grounds would be adverse to the interest of the State and morality.

240. If it be once decided that other grave causes for divorce, besides adultery, may be added, it is difficult to give much weight, on the question of what causes ought to be added, to the first two classes of witnesses, because, although they may consider any extension adverse to civil and moral as well as religious interests, it is difficult, if not impossible, for them to regard the matter apart from their religious views, which naturally lead them to look upon anything inconsistent with such views as contrary to the best interests of society.

As against these witnesses, we may repeat what we have already stated, that it is one of the most striking features of the evidence which has been taken by the Commission that theological difficulties have weighed little with the great mass of the witnesses, and among those who feel them there are differences of opinion.

With regard to those witnesses who fall under the third category they are in a very small minority.

241. The fear of those who would treat the marriage tie as indissoluble, or would oppose any extension of the present grounds for divorce, is that the stability of the marriage tie in general would be adversely affected and that there would be a general lowering of the standard of morality. We believe that this fear is groundless, that it ignores the actual experiences of life, and that, if it were strictly acted on, it would perpetuate the evil results produced by the present state of the law. The remedy of divorce is at present, as we have shown, practically inaccessible to the poorer classes, and the evidence before the Commission shows that this state of things does not tend to develop due regard for marriage, but the reverse.

Conclusions.

242. In considering what law should be laid down in the best interest of the whole community, the State should be guided by two principles:—

(1) No law should be so harsh as to lead to its common disregard.
(2) No law should be so lax as to lessen the regard for the sanctity of marriage.

243. It appears to us that those who allow the vague fear of possible injury to morality to exclude all other considerations act in conflict with the first principle. The alternative is to recognise human needs, that divorce is not a disease but a remedy for

a disease, that homes are not broken up by a court but by causes to which we have already sufficiently referred, and that the law should be such as would give relief where serious causes intervene, which are generally and properly recognised as leading to the break-up of married life. If a reasonable law, based upon human needs, be adopted, we think that the standard of morality will be raised and regard for the sanctity of marriage increased. Public opinion will be far more severe upon those who refuse to conform to a reasonable law than it is, when that law is generally regarded (as we infer from the evidence) as too harsh, and as not meeting the necessities of life.

244. Thus we are led to consider what are the causes which the State ought to recognise as sufficient to warrant the dissolution of the marriage tie. We see no serious difficulty in determining what should be regarded as such causes. Some witnesses appear to have laboured under the apprehension that this Commission might recommend that divorce should be granted for "trivial reasons." It is obvious that to make any such recommendation would be repugnant to the principles which we have already indicated, because it would lead to dissolutions being granted without any real necessity, instead of being granted only on adequate grounds of human needs.

Consideration of suggested Causes for Divorce.

245. We do not recommend the Legislature to permit of the dissolution of marriage for other than very grave causes. If once an attempt be made to proceed beyond this principle, marriage would practically become a union which would be merely continued at will. Upon that subject we make certain comments hereafter.

246. The causes which have been suggested to us, in the course of the evidence, as justifying the Legislature in providing for the dissolution of marriage, are the following:—

(1) Adultery.
(2) Bigamy.
(3) Wilful desertion.
(4) Cruelty.
(5) Incurable insanity.
(6) Habitual drunkenness.
(7) Long-continued imprisonment.
(8) Disease.
(9) Unconquerable aversion.
(10) Mutual consent.
(11) Refusal to perform conjugal duties.

We proceed to consider each of these suggested causes by itself.

247.—(1) *Adultery.*—This cause has always, as far as we can trace it in history, been recognised as justifying the complainant in putting an end to the marriage tie; we are omitting for the moment the additional charges in a suit by a wife. The ecclesiastical courts have always recognised this ground as justifying a decree of judicial separation, and it was recognised as a ground of divorce in England throughout the whole period of the private Acts of Parliament, and by the Legislature in the Act of 1857.

The basis upon which the courts and the Legislature have proceeded, apart from any scriptural doctrine, appears to us to be that faithfulness to the marriage vow, which involves the sexual union of two people, is an essential feature of the union.

We consider also that the term adultery should include (1) sodomy; (2) bestiality; (3) any other unnatural offences. The first two of these are specially mentioned in the Act of 1857, but seem hardly wide enough to cover certain other offences which need not be particularly specified.

248.—(2) *Bigamy.*—In some countries bigamy is a ground for divorce. In England, a wife may obtain a divorce on the ground of bigamy with adultery, but if the grounds are made the same for men and women, proof of adultery alone will be sufficient. Bigamy is a criminal offence, for which the offender may be convicted and punished, but adultery is a matrimonial offence. If adultery can be proved in the ordinary way, it seems unnecessary to suggest making bigamy *per se* a ground of divorce.

In some cases a bigamous marriage may be easily proved, but mere proof of bigamy is not sufficient; evidence, from which the fact of adultery can be found, has to be given. It might be suggested that subsequent adultery with the person, with whom a bigamous marriage is contracted, might be inferred from the mere fact of such marriage without further proof, because it is reasonable to infer from a bigamous marriage that it has been followed by sexual intercourse. But the court only infers the fact from circumstances, which lead to it by fair inference as a necessary conclusion, and we think it may be assumed that slight evidence of misconduct, after proof of a bigamous marriage, would be acted on. We do not recommend the introduction of a new rule as to proof of adultery.

We think that it is unnecessary that bigamy should be made a separate ground of divorce.

249.—(3) *Wilful Desertion.*—Desertion is at present a ground for a sentence of judicial separation, and may be obtained by either the husband or the wife. The desertion must be wilful, without the consent or against the will of the other party, and without reasonable cause for two years and upwards. Wilful desertion for four years was confirmed by Statute as a ground of divorce in Scotland in 1573, and although that Statute required certain preliminaries before a decree could be obtained, these preliminaries were abolished by the Conjugal Rights (Scotland) Amendment Act, 1861, so that, on the lapse of four years of wilful and malicious desertion, a deserted spouse may at once institute an action without any further proceedings. An account of the Statute of 1573 is given by Lord Salvesen in his evidence, and the right given by it has existed until the present day without any attempt to do away with it, and it gives satisfaction to the people in Scotland. It has not been suggested that it is productive of any effects adverse to the general morality of the nation.

This ground of divorce was recognised by the Westminster Confession of Faith, which was adopted by the Church of Scotland in 1647 and ratified in substantially the same form by Act of the Scottish Parliament, May 26th, 1690. (Acts of Parliaments of Scotland, Vol. IX., p. 128, and appendix to Vol. IX., p. 147.) A copy of the article on this point as ratified by Parliament is as follows:—

> "In the case of adultery after marriage, it is lawfull for the innocent party to sue out a divorce, and after the divorce to marry another, as if the offending party were dead.
>
> "Although the corruption of man be such, as is apt to study arguments, unduly to put asunder those whom God hath joyned together in marriage, yet nothing but adultery, or such wilfull desertion as can noways be remedied by the Church or civil magistrate, is cause sufficient of dissolving the bond of marriage, wherein a publick and orderly course of proceding is to be observed, and the persons concerned in it, not left to their own wills and discretion in their own case." (Chap. 24, ss. 5, 6.)

250. The number of decrees of divorce, granted in Scotland for adultery from 1898–1908 and for desertion during that period respectively, are given by Lord Salvesen (6208, 6213), from which it appears that the total number of decrees for desertion is less than the total number of decrees for adultery. Lord Salvesen says that, relatively to the population, there has been a decrease in the aforesaid 10 years. There appears to be nothing in these tables to justify the fears of those who fear the effect of divorce being granted for desertion. On the contrary, while these decrees on the ground of desertion have no doubt remedied very serious grievances, no abuse of this right appears to exist, nor does there seem any reason to suppose that any abuse of it would be found in England.

251. In 1892 the Bill referred to on p. 87 was introduced into the House of Commons to make desertion without reasonable excuse for four years and upwards a ground of divorce, but, as we have already stated, after being read a first time, it was not proceeded with. (*See also* the evidence of Earl Russell as to the Bills introduced by him 42,339 *et seq.*)

252. In the following countries, in addition to Scotland, desertion is expressly made a ground of divorce, namely: Austria (for Protestants), Hungary, Bulgaria, Denmark, Germany, The Netherlands, Russia, Sweden, Switzerland, Cape Province, Natal, New Zealand, New South Wales, and Victoria. In Greece it is not a ground of

divorce, nor in the following colonies: Queensland, Tasmania, South Australia, and Canada. In Belgium and Roumania there is divorce by mutual consent, so that desertion as a ground becomes unnecessary, and Norway has a new law, the terms of which will be found in Appendix V., p. 43.

253. A large majority of the witnesses, who gave evidence on this point, were in favour of establishing wilful desertion as a ground of divorce.

254. The main reason for introducing this cause as a ground of divorce is that wilful desertion, persisted in, breaks up a home even more than an act of adultery. A great deal of evidence has been given before us as to the cases in which desertion takes place, and one of the spouses disappears to a British Colony, or a foreign country, and cannot be traced. The position of a wife deserted by her husband is particularly hard. A husband may depart with another woman, and it may require considerable expense to trace him, expense quite beyond the means of the wife. If she could trace him, she would almost inevitably find that he was living with another woman, and would under the present law, if she could prove it, obtain a divorce, on the ground of desertion and adultery. In fact, in cases of desertion adultery might usually be presumed. Wife and children under such circumstances may be living without any means of support. An unfortunate woman with a large family is left practically in the position of indigent widowhood until her husband dies, and even then she may not be able legally to prove his death. A husband's position, deserted by his wife, is perhaps not so common, but is sufficiently common to be a serious grievance, and his position is practically the same, with regard to the difficulty of proof of anything further than desertion. If he be a poor man, he is left without anyone to look after his home or his children. In both cases, the results appear to be almost inevitable, that other relationships are formed.

The letters to which we have previously referred (p. 47) from persons dealing with their own individual cases contain instances where husband or wife has been deserted for periods ranging from two to thirty years, and offer illustrations of the above statement.

255. The principal objection to desertion as a ground of divorce is that the deserting spouse may return. But that objection does not avail in cases of judicial separation, where, although the parties may reunite, they can only do so by mutual agreement, and consequently, if the desertion has been wilful and has lasted for a considerable time, immoral ties are likely to be formed after an interval by the deserted spouse. In those cases of practically permanent desertion, although in some cases parties may rejoin, as a general rule it will be found that the home once definitely broken up is not re-formed.

256. Another objection was that more scope for collusion will be given, if this ground be adopted. The answer to that objection is that no such difficulty has been found in Scotland, nor has anything been brought to our attention that suggests that it creates difficulty in any foreign country. It seems not reasonable to assume that this result will take place, if desertion is only a ground of divorce after an interval of a lengthy period. Moreover, the judge trying the case ought to be satisfied that the desertion is wilful and not by consent, and should require satisfactory proof to that effect, and if he feel any doubt on the subject, the papers can be sent to the King's Proctor for investigation before decree absolute. And safeguards against any impropriety exist in the powers of the court, after divorce, to order payments to be made to the wife for her maintenance, and to resettle any property which has been settled. It is suggested in a further part of this Report (p. 134), that these powers should be extended.

257. We recommend that wilful desertion, without the consent or against the will of the other party, and without reasonable cause, should be a ground for divorce.

258. If our recommendation be adopted, the question then arises, for what period the desertion should run. The period of four years in Scotland was fixed more than 300 years ago, at a time when communication was difficult. Different periods are to be found in the different codes of other countries; in Germany the period is one year. If we were only considering cases in which wealthy people were concerned, it might be reasonable to impose a term of not less than four years, but, when we

have to keep in view those in poor circumstances, time becomes of the utmost importance, because of the necessity for as early as possible simplifying the position of the deserted spouse, especially in the case of women.

259. Our conclusion is that, in view of modern means of communication, the period ought to be three years. We think it would follow that the present period of two years, to constitute desertion which will give ground for a judicial separation, should be made to correspond with the period of three years.* We deal hereafter with means of process for maintenance, &c. during this period.

260. There have been various decisions as to what in fact amounts to desertion, and we do not find it necessary to comment thereon, but we may notice that it has been considered that wilful refusal to permit of marital intercourse without reasonable excuse, may put an end to cohabitation and amount to desertion. It should be clearly expressed that such refusal should be treated as amounting to desertion, and, if persisted in for the period aforesaid, should be ground either for divorce or for judicial separation. (*See* the case of *Synge* v. *Synge*, L.R. [1900], P. 180; [1901], P. 317.)

261.—(4) *Cruelty.*—Cruelty is a ground on which a sentence of judicial separation may be obtained either by the husband or the wife, and, if such a sentence can be obtained, we are of opinion that divorce is the proper remedy, and we recommend that this cause ought to be added as a ground of divorce.

262. Cruelty is a ground of divorce in Austria, Hungary, Belgium, Bulgaria, France, Roumania, Russia, Switzerland, New South Wales, and Victoria; and in Sweden, Germany, and Greece, attempts on the life of the applicant are a ground of divorce, which come under the general head of cruelty.

263. Many of the witnesses have referred to the effect of cruelty, and a large number of instances have been given. We may refer to the illustrative cases disclosed in the letters we have received, some of which are set out in Appendix XXVI., p. 172 *et seq.* It seems shocking that a woman, for instance, is bound to remain the wife of a man, who has been guilty of such gross cruelty towards her that it is absolutely unsafe for her, as regards life or health, to continue to live with him. A remarkable instance of this is afforded in cases of men compelling their wives to prostitute themselves for the husband's maintenance—cases by no means uncommon. (*See* the evidence of Mr. J. Pedder of the Home Office (40,960 *et seq.*) of Mr. Wansbrough (17,375–17,380) and of Mr. Palin (18,249–52).)

264. Communication of venereal disease, knowingly or negligently, has always been regarded as cruelty, and we refer to the medical evidence given before us on this subject, especially that of Mr. J. Astley Bloxam, consulting surgeon to the Charing Cross Hospital and the Lock Hospital. The witnesses do not differ as to the results of both syphilis and gonorrhœa in producing sterility, and illness, and other serious effects on parties and their children, and the disastrous consequences which arise where such a contamination has occurred. We can conceive no cause which more fully justifies an application for divorce than this class of cruelty.

265. We have already (p. 71) given a definition of cruelty as follows:—

> Cruelty is such conduct by one married person to the other party to the marriage as makes it unsafe, having regard to the risk of life, limb, or health, bodily or mental, for the latter to continue to live with the former.

It may be said that, even with this definition, the courts have been apt to allow of the finding of cruelty in cases where the cruelty is of a trifling character. The explanation of this is that the alleged cruelty is usually associated with a charge of adultery made by a wife, and if that charge is proved, slight evidence of cruelty is permitted to pass to give a ground of divorce. But if each of these causes become a ground of divorce, the temptation to take this course will be removed.

The danger which arises in France from the permission of divorce for "sévices" or "injures graves," pointed out by Monsieur Mesnil (43,054 *et seq.*), which are construed in a very wide sense, is eliminated by requiring that the cruelty shall be dangerous to life, limb, or health, before it can be allowed as a ground of divorce.

* NOTE.—In view of the statement on page 1, as to the late Sir George White's concurrence in substance with this Report, it is right to mention that he voted in favour of a period of two years.

Objection is made that the parties may come together again. But if cruelty be such conduct as makes it unsafe, having regard to the risk of life, limb, or health, mental or bodily, for the applicant to continue to live with the other party, and that position is established by adequate evidence, it seems only reasonable that the tie which permits of such disaster should be finally sundered, not merely in the interests of the complainant, but in many cases also in the interests of children.

266. We recommend that, for this purpose, this definition of cruelty should be adopted; that cases of cruelty should include the cases mentioned on p. 71 under the head of our observations on the jurisdiction of courts of summary jurisdiction, and that the proof required in those cases, as there mentioned, should be sufficient in the cases in which a divorce is asked.

267. (5) *Incurable Insanity.*—We have now to consider insanity as a ground of divorce. The question raised is of great importance, and has not been considered by any commission in this country, although the hardships resulting are well known and have been frequently discussed. The evidence given before us and the communications received by us prove these hardships and the disastrous moral effects inseparable from the present state of the law.

268. We have hitherto dealt with causes based upon the misconduct of one of the parties to a marriage, and it has been suggested that a new principle is introduced, if the ground, on which dissolution of marriage is sought, is the result of misfortune, and that, in any view, a marriage ought only to be dissolved, on the ground of marital misconduct.

But this suggestion is based on a misconception, arising from a narrow view of marriage as a mere contract, and from treating a suit for dissolution of marriage as if it were an action for damages, or penalties for wrongful breach of contract. It is not a mere contract. It is a relationship, voluntarily entered into by agreement between a man and a woman, for purposes which are well recognised, and such relationship is regarded as creating a status resulting from the joint life, which alters the position of the parties towards each other and the community. A suit for dissolution is not brought merely on account of wrongful conduct of a party, but on the ground that by reason of such conduct the marital relationship has become practically impossible of continuance, and the purposes for which it was entered into have been frustrated. Even looked at from a contractual point of view, the case falls within the class of cases in which contracts, the performance of which has become impossible by the occurrence of matters not contemplated by the parties, may in certain circumstances be regarded as no longer binding. Naturally, when the results are produced by the misconduct of one party, the right to treat the relationship as at an end rests with the other. The decree of dissolution in effect merely declares that that relationship (the continuance of which has become practically impossible, and the purposes, for the formation of which it was entered into, have been frustrated), is to be regarded as legally at an end.

When two persons enter into the married relationship, they may reasonably be supposed to contemplate the continuance of that relationship during their joint lives with the objects to which we have already referred, and with the risk of the ordinary vicissitudes, changes and troubles of life which everyone has to expect, and which fall within the reasonable meaning of the expression "for better for worse." Those ordinary vicissitudes, changes, and troubles may affect the comfort and happiness of the parties, and interfere to a varying extent with one or more of the objects aforesaid, but they do not bring the married relationship to an end *de facto*, nor render it practically impossible of continuance.

But persons marrying cannot reasonably be supposed to contemplate the continuance of the relationship becoming impossible, the joint life determined, and the objects aforesaid wholly frustrated by reason of misconduct or otherwise.

Misconduct is not the only ground which has this latter effect. If the marital relationship becomes impossible of continuance by reason of insanity, all the difficulties which we have pointed out in this report, arise. Indeed incurable insanity is more effective in determining the relationship than any of the other causes which we have recommended as grounds of divorce. In cases of incurable insanity the married relationship has ended as if the unfortunate insane person were dead, and the objects with which it was formed have become thenceforward wholly frustrated.

It seems unreasonable to suppose that two persons, about to be married, contemplate that their joint life will be determined by the incurable insanity of one of them, who must be confined in an asylum or other establishment for the reception and care of lunatics for the remainder of his or her life, and that, notwithstanding, they are to be held bound to the tie, when it has become impossible to perform any of the duties associated with it. In incurable cases, the permanent separation of the parties, under the provisions of the Lunacy Acts, has the same practical effect on the marriage tie as the order of judicial separation in other cases.

269. Dr. Robert Jones, whose qualifications and experience are given by him (34,231), and who has visited asylums in Russia, Poland, Norway, Germany, Austria, Switzerland, Italy, and France, states the position with regard to insanity thus (*ib.*) :—

> "*Nature of Marriage.*—It implies a contract, but in the insanity of one party to the contract, that party is unable to fulfil its obligations, and is moreover unable, owing to derangement of reason, to consent to annul the contract. The State steps in and 'restrains' the sufferer against his will. It takes its own will and imposes it upon him, it disposes of his property, releases him from certain obligations, but binds him in matrimony to the detriment of his family and the State.
>
> "Under analogous conditions the State consents to the nullity of a marriage, when by physical infirmity one of the parties to the contract is unable to perform its required duties—bodily incapacity existing at the time of the marriage and proved to be incurable.
>
> "Insanity is a physical disease, and it implies mental disabilities also; it is moreover, one which deprives the sufferer of his liberty, of his civil rights, of his social, financial, political, and even of his domestic rights, and a person united in the bonds of matrimony to a chronic and incurable lunatic is for all practical as well as legal purposes one united to a dead person, for by the nature of his physical condition he is not only unable to direct the life of another, but is unable even to control his own. The marriage contract is ended by death, and should similarly and for the same reason be ended by confirmed insanity, which is social and domestic extinction. The insane to-day are under better hygienic conditions and live longer; the grievance is, therefore, all the greater.
>
> "It is against the interest of the struggling partner and of the family to be thus bound. They should have the option by law of another chance of mating with a healthy person."

270. It was said that to allow of insanity as a ground of divorce would lead to other cases of disease being made grounds, such, for instance, as paralysis, malignant disease, and phthisis. This is not a sound suggestion. With the exception of leprosy, which now happily need not be considered in England, insanity considered in relation to the marriage tie, occupies a unique position, which serves to distinguish it from every other disorder of the body.

The incurably insane have usually to be removed from their own homes, and are confined and isolated in an asylum or recognised establishment, and anything approaching family life is impossible. The position of persons suffering from other diseases is quite different. Moreover, the incurably insane are incapable of carrying out any of the obligations incident to marriage, though in a few cases they may be capable of fulfilling the physiological obligation of marriage; they are, in fact, as if they were non-existent. Subjects of other maladies may be still companionable, and capable of managing the affairs of their households, able to associate with other persons, and of fulfilling a considerable proportion of their marriage duties: and they remain capable of receiving in the ordinary way the care and attention of their married partner, and others by whom they are surrounded. So far as public opinion is concerned, the sympathy of most people would be extended to the young husband or wife about to divorce an insane spouse who no longer even appreciates or recognises his or her existence, whereas most people would condemn anyone who attempted to divorce his or her partner for paralysis or consumption.

271. The evidence taken by us on this subject included that of a number of persons of great experience, whose names we have above set out in the list of witnesses. These witnesses gave their statements with much detail of facts and figures. We give what appear to us to be the main points to be gathered from the evidence. Sir Thomas Clouston, Dr. Robert Jones, and Dr. Hyslop were nominated to give evidence by the

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British Medical Association, as practitioners recognised by the profession as competent, in respect of their experience and general qualifications, to represent to us not their individual opinions only, but the present state of medical knowledge upon the subject with which they deal. We understood that these gentlemen did not speak as actual representatives of the Medical Association though nominated by it, but gave their evidence upon their own responsibility from their large experience. Sir James Crichton-Browne, while expressing the belief that the majority of the British Medical Association, numbering some 25,000 medical men, might agree with the views expressed by these three gentlemen, stated that there would be a very strong body of opinion on the opposite side (34,950–1).

272. There are about 150,000 registered insane persons in the United Kingdom; of this number probably some 60,000 or 70,000 are married. Sir Thomas Clouston, of Edinburgh, whose qualifications and large experience are well known and will be found stated (34,020), and upon whose evidence we place much reliance, estimates (34,026) that should incurable mental disease or defect become a ground for divorce, some 41,000 married persons might be affected by the change in the law, the exact number depending on the number of years detention which might be fixed. Dr. Coupland, one of the Commissioners in Lunacy, gives tables bearing on the point (Vol. III., pp. 74–6), and states that it may "be fairly concluded that about 90 per "cent. of those detained in asylums are the subjects of chronic and probably incurable "forms of insanity, the remaining tenth forming a fluctuating community" (35,115). He estimates, roughly, that in 65 asylums about 10,000 cases would be incurable, of which half, or rather less than half, are cases of married people (35,119–20). Dr. Robert Jones states (34,240) that there are 8,000 persons, more than half of whom are married, between the ages of 25 and 50, incurably insane in the county of London alone. Sir James Crichton-Browne, the Lord Chancellor's Visitor, however, gives calculations from which he estimates that the married persons who remained in asylums after five years would be 34,800, and he states that he should not be surprised if the number of those affected by a change in the law of divorce fell under 15,000 (34,952).

It is impossible to estimate how many persons would desire to take advantage of a change in the law in order to obtain divorce for insanity, but it is clear that a large number of persons would have the opportunity of doing so.

273. Of the 150,000 registered insane, about 50,000 (*i.e.*, one-third of the whole) are, according to Sir Thomas Clouston, the subjects of incurable secondary dementia. He also states that there are about 4,000 persons suffering from what he terms "gross organic brain diseases," accompanied usually with paralysis or aphasia, the great majority being incurable, but that these patients are mostly past middle life, and the question of divorce would not be likely to come up in most of these cases. Also that there are about 2,000 or 3,000 persons, suffering from general paralysis of the insane at present found to be incurable, but its average duration from the beginning till the patient dies is only about three years. Out of the large number of epileptics in the United Kingdom, there are some 7,000 to 10,000, to one-third of whom (being married) any change in the divorce law might apply, the disease being practically incurable (34,024).

He states that there are some 30,000 or 40,000 persons classed as the high-grade or "congenitally feeble-minded" in the Report of the Royal Commission on the Feeble-minded (one-half being females) who would come under the scope of any divorce law (34,024), but it does not seem clear how many of these are included in the aforesaid 150,000 registered persons.

He also estimates (34,026) that there are 20,000 incurable alcoholic cases to which divorce proceedings might apply, half of them being married. He also mentions persons suffering from delusional insanity, and about 1,000 cases of recurring insanity in asylums, half being married, and cases of senile dementia. Dr. Coupland, one of the Commissioners in Lunacy, gives figures from which it appears that cases of delusional insanity represent 10 per cent. of the total number of the insane, and senile dementia 3·4 per cent.

274. With regard to recovery, two-thirds of the inmates of asylums may be regarded as incurable (Dr. Coupland, 35,119). The average percentage of recoveries in asylums is between 33 and 35 per cent. of the admissions; of this percentage 10 may be

expected to relapse and 25 to remain out of the asylums (Dr. Marriott Cooke, a Commissioner in Lunacy, 35,385–86).

Dr. Coupland (35,114) shows that of those who recover—

88·8 per cent. recover within the first 2 years,
9·1 „ „ in from 3 to 5 years,
1·6 „ „ „ 5 to 10 years,
0·5 „ „ „ 11 to 20 years.

Sir Thomas Clouston (34,026) gives figures relating to 13,172 patients sent to the Royal Edinburgh Asylum in the 35 years 1874–1908 inclusive. 36·4 per cent. recovered.

Of these recoveries—

2·9 per cent. took place after 3 years.
1·2 „ „ „ 5 „
0·2 „ „ „ 10 „
0·1 „ „ „ 15 „
0·08 „ „ „ 20 „

Of examples of recovery after 20 years he records only four instances out of nearly 5,000 cases of recovery. Of puerperal insanity it is affirmed that 80 per cent. recover, while the rest usually become demented (34,141).

In the matter of the ages of the married insane, Dr. Coupland gives the following table (35,107)—

—	Age.	Males.	Females.
Married insane - - - -	At 20 to 44 years	43·6 per cent.	56·0 per cent.
	„ 45 „ 64 „	45·3 „ „	37·8 „ „
	„ 65 and over	11·1 „ „	6·2 „ „

275. In the following countries insanity is a ground for divorce:—Germany, Norway, Sweden, Switzerland, New Zealand, Bulgaria, Denmark, Russia. In the first four, the insanity must be of three years' duration and incurable. In New Zealand, the respondent must have been confined as a lunatic for a period or periods not less in the aggregate than 10 years, within 12 years immediately preceding the filing of the petition, and be unlikely to recover (16,026). In the other three countries, no details are forthcoming. It has only been adopted in a few states of the United States, and does not appear as a ground of divorce in the aforesaid Model Law (p. 27).

276. Thirty medical witnesses appeared before the Commission. To 10 of these the question as to insanity was not put; of the remaining 20, 12 were in favour of making insanity a ground for divorce, 7 were against the proposal, and 1 was undecided (34,547). Two of the medical witnesses, who were in favour of the proposal, based their conclusion almost entirely on the ground of eugenics (Dr. Rentoul and Dr. David Walsh). Of the 11 specialists in mental diseases among the above number, 4 were in favour of insanity as a ground, while 7 were against. Sir George Savage (35,976) obtained from 82 medical officers of asylums answers to the question, "Is insanity a justifiable ground for divorce?" Of these, 51 were in favour of insanity being a ground, 29 were against the proposal, and two were indifferent. Certain of those who replied in the negative did so on religious grounds. Of the total number of medical men whose opinions have been obtained, 63 were in favour of insanity as a ground, while 36 were against. The majority of the non-medical witnesses who dealt with this point, were in favour of making insanity a ground.

277. We do not think that the different opinions which are found among the witnesses, whether medical or not, arise from any practical dispute as to facts, but rather from differences of opinion as to policy and upon religious matters.

278. The attitude of certain specialists in mental disease towards the present question calls for some comment. In the first place exception is taken by them to any legislation, which would place insanity in a category distinct from that of any other disease. Dr. W. D. Moore considers such action, if taken, would be a "retrograde step" (41,059). It is only within comparatively recent times that lunacy has been scientifically studied and treated. It was at one period regarded not as a disease,

but as a demoniacal possession, the manifestations of which were to be ruthlessly restrained. The lunatic was treated not as a sick man but as a common brawler, and was locked up as being a disturber of the peace and a public nuisance. Upon the acceptance of insanity as a disease, there followed its treatment upon scientific lines, and upon those humane principles which underlie the treatment of other disorders. The alienist naturally protests against any measures which will place insanity once more in a position apart from that occupied by other maladies, and, among such measures, he ranks the proposal to treat insanity as a ground for divorce. This view will be found expressed in the evidence of Dr. W. D. Moore (41,059, 41,064), and Dr. E. M. Cooke (35,373).

Then again, the medical officer of an asylum properly considers the interests of his patients as the first concern in any legislation dealing with the insane, and would be disposed to object to any enactment, which might prejudice in any way the welfare and comfort of those under his charge. This attitude is made evident in the examination of several of the witnesses.

The Commissioner in Lunacy is officially "the guardian of the insane" (35,138). His duty is to protect the interests of the insane. As Dr. Coupland (35,143) expresses it, he "holds a brief for the insane," and under these circumstances a Commissioner could hardly be expected to favour any action which would, in his opinion, be possibly unfavourable to those for whom he is responsible.

279. Sir James Crichton-Browne expressed himself as opposed to divorce altogether on any ground and under any circumstances (34,986, 35,011–2).

His main grounds (apart from religious objections) for opposing divorce on the ground of insanity appear to be (34,967 *et seq.*) that it would reduce the care and caution with which the marriage ceremony is entered into; that in his experience there is no demand for it; that amongst the poor it would be chiefly sought for the purpose of getting rid of the cost of maintenance, and that (this was his strongest point) it was a disease, and if it was admitted as a ground, he could not see why other diseases should not be admitted. We differ from the witness with regard to the first ground which is matter of opinion, and consider the opposite effect would be produced. With regard to the second, we hold that it is contrary to the weight of the evidence from the other experts, and to the general evidence given before us, and to the communications we have received. With regard to the third ground, we point out elsewhere that, if the applicant can bear the cost of maintenance, the decree can be made subject to provisions being made for its payment. And with regard to the last ground, we have already (p. 101). dealt with the broad distinction between incurable insanity and any other disease.

280. It was suggested that it may be difficult to determine the fact that a patient is absolutely incurable, and that conflicting medical evidence might leave the question uncertain. The evidence clearly shows that, if a time limit be given, the difficulty becomes almost negligible, and there appears to be no reason to suppose that, if the ground is confined to *lunacy pronounced incurable after five years continuous confinement*, any real difficulty would arise.

281. The figures already given of the percentages of recoveries, as estimated in periods of years, show how insignificant is the risk of error in the case of those who have been continuously insane for over three years, and although it was asserted that persons had recovered after 20 years' confinement in an asylum, it should be added that the number of those who recover after 10 years is not more than 0·5 per cent. Sir George Savage, whose position and experience are well known, and who is opposed to making insanity a ground of divorce, states that if five years be allowed and a definite medical inquiry be held, the risk of miscarriage will be almost negligible (35,985), and would not involve one case in a thousand (35,997). As to whether there have been instances where a patient has recovered after being divorced for insanity, it is stated that in Saxony these cases have been very few, while in Prussia such a case has never happened (34,944: V. (*b*)).

282. It may be said that poor persons could not afford to pay for the special medical evidence demanded in these cases, and that an insane person might be undefended, or possibly defended by the children who might place themselves in opposition to that parent who was endeavouring to obtain a divorce; but with regard to persons in the position of the poor who might have difficulty, our proposal hereafter (p. 107) as to expert evidence seems to meet these difficulties.

283. It was also suggested that the knowledge that insanity might be a ground of divorce would affect married persons of poor health or unstable mental condition, and might hurry them into actual insanity, especially in cases of puerperal insanity, (35,911, 41,059, 41,113), and that such knowledge might act prejudicially to some insane persons and might hinder their recovery and possibly aggravate their mental condition (34,957, 35,866, 35,868, 41,059), also that certain of the insane, notably those subject to delusional insanity, would most deeply resent divorce proceedings (34,024), and would be caused mental torture by the knowledge that divorce was possible (41,059), and that an additional terror might be added to the stigma of insanity.

In answer to these suggestions, certain of the eminent specialists, who have given evidence, contradict the suggestion that knowledge that insanity may be a ground of divorce would cause a person of unstable mind to become an actual lunatic (*see* the evidence of Dr. Hyslop, 34,422; Sir Thomas Clouston, 34,043, 34,107; and Dr. Jones 34,309).

As to the likelihood of resentment of divorce proceedings affecting the mental condition, Dr. Coupland's tables show that examples of delusional insanity only represent 10 per cent. of the total number of the insane. As to the general question, Dr. Mott does not think that the possibility of divorce would have an injurious effect on the insane (35,720), and from his inquiries he says that German physicians do not think that the divorce law of Germany acts to the detriment of the lunatic *qua* lunatic (35,726), and Sir George Savage's view of this question of injury to the insane is that it is a possibility, but not a serious one. Dr. Robert Jones considers "that it would "have no effect in the way of precipitating insanity from borderland cases" (34,309).

284. Suggestions that making insanity a ground of divorce might in some cases have an injurious effect on patients seem to arise from omitting to consider that only incurable insanity, found to be such after a long period of confinement, would be likely to be recommended as a ground, and that such a recommendation should remove any apprehensions with regard to those whose confinement is of short duration, or whose cases have any reasonable prospect of recovery.

285. Minor suggestions on this large question were made to us as to the position of a patient divorced, and as to the possibility of suits being brought to avoid paying for the maintenance of insane persons. But the court should have power to withhold its decree, unless adequate provision were made for the maintenance of the insane person, or such maintenance were provided under the provisions of the Lunacy Acts.

286. When this question is looked at broadly, it has to be observed that there are a great number of married persons in the United Kingdom who are hopelessly insane. Among these the largest class is composed of those suffering from secondary dementia. Of such it is said that they "have no proper interest in life, are quite unable to care "for themselves or to manage their affairs." This condition, when fully established, is absolutely incurable, while most of those patients live for many years. They "have so lost the power of proper feeling that the fact of their divorce would make "no painful impression on their minds, or no impression at all" (34,022). "Their "own affection for their relations is perverted or dead" (34,030). They "are for the "most part incapable of deriving any comfort from the visits of their friends" (34,049). To them their wives or husbands are as strangers, and indeed, these subjects of dementia are, except in a physiological sense, "practically dead" (34,224, 34,277). With regard to the marriage contract they are unable to understand it, to remember it, to fulfil its obligations, or to consent to annul it. Even their property is disposed of for them, while at the same time they are kept in close and compulsory confinement. It is contended that the hopelessly insane are, as parties to any contract, practically non-existing.

Sir Thomas Clouston says: "I have met with large numbers of such cases who "have become insane soon after marriage; some have had children, and both those "children and the sane husbands or wives have suffered extreme personal, social and "family hardship thereby" (34,022).

Dr. Robert Jones says (34,232): "I know numerous instances (which I could "quote) where either the husband or the wife has become insane within a few weeks "or months (in some instances within a few days) of marriage, and in whose case

" there is not the slightest prospect (humanly speaking) of ultimate recovery." He also points out the injurious consequences to the individual, the family, the race, and the State, and the immorality and other evil effects of there being no right of divorce for incurable insanity. We refer to this evidence, 34,232 *et seq.*, and to 34,261–7.

287. In certain cases of those confined on the ground of insanity death may ensue before the limit of time suggested has arrived; in other cases there may be recovery or no reasonable certainty that the case is hopeless; in others there may be alternations of sanity and insanity, which would not permit of continuous confinement. But if the remedy of divorce be confined to cases in which (1) married life has become impossible owing to the hopelessly incurable condition of the patient, and (2) that condition is established after the termination of a lengthy period, we conceive that no injustice will be done, while, on the other hand, great hardship and evil consequences will be averted or removed.

288. In cases of insanity among married people, great hardships may be inflicted upon the sane spouse, and immorality in various forms may ensue. When the insanity is incurable, the sane spouse is not only denied the enjoyments and advantages of married life, but is condemned—often whilst still young—to a compulsory celibacy which may extend to the end of his or her days. The sane spouse is unable to add healthy legitimate children to the State and continue the family name. The poor man, whose wife is in an asylum for life, must find a housekeeper to manage his home, and take care of his children. The woman, who is deprived of her husband, loses a protector and supporter. As a result, irregular unions, immorality, and the production of illegitimate children are inevitable. The wife may in some instances be driven to prostitution, the children of the legitimate union are apt to be neglected, and the economic troubles incident to the support of two families may be acute. There is no doubt that the hardships which are inevitable when a husband or wife is confined for life in an asylum, tell more hardly upon the poor than upon the rich, and that the demand for relief in a large series of cases is very pressing.

289. We have given anxious consideration to this important subject, and we are satisfied that it will be to the interests of the parties affected by cases of lunacy, to the interests of their children and of the State and morality, that insanity should be introduced as a ground of divorce, subject to the following limitations.

290. We recommend that the insanity, which should form a ground of divorce, should be certified as incurable, and that the insane spouse should have been continuously confined, under the provisions of the Lunacy Acts for the time being in force, for not less than five years. Under these Acts confinement of an insane person may be in various places, such as an asylum, an institution for lunatics, a workhouse, a hospital, licensed premises, and in authorised private hands (*see* ss. 4–38 of the Act of 1890), and changes may be made in the places in which the confinement takes place. Our recommendations would permit of the period running in whatever place or places the lunatic was confined under the Acts.

291. It is to be particularly observed that there are two conditions: (1) incurability; (2) a period of time must elapse. Even after the lapse of that period it would not follow that the first condition could be fulfilled, and that it was fulfilled would have to be established by evidence to the satisfaction of the court.

The provision that the confinement must be continuous should be so expressed that continuity would not be interrupted by an escape or other transitory occurrence, the patient remaining still registered as insane.

Such cases as general paralysis of the insane, recoverable puerperal insanity, and certain other cases would not, in effect, be included in the cases to which our recommendations would apply. Either by death or recovery, they would not be cases of incurable insanity, remaining after five years' confinement.

292. We further recommend that the insanity should be found to be incurable to the satisfaction of the court, and that this ground should only operate when the age of the insane person is, if a woman, not over 50 years, and if a man, not over 60 years. The last recommendation would exclude the case of senile dementia, and cases where

there is no reasonable ground for dissolving the marriage, having regard to the age of the parties.

293. We further recommend, that, in all cases of a suit for divorce on the ground of insanity, the initial proceedings shall be served on the King's Proctor, who shall thereupon communicate with the Lunacy Commissioners, who may, in their discretion, instruct him to take such steps, if any, as they think desirable to see that the case is properly defended, and to bring before the court any material matters; and the necessary powers should be conferred on the Commissioners and the King's Proctor for this purpose, and the necessary provisions made as to the costs of the King's Proctor and Lunacy Commissioners, which should be costs of their offices, unless they are recovered from the applicant.

294. We further recommend that the court should have power to permit, if it thought fit, the intervention of a relative, or a trustee of any will or settlement under which the respondent should be interested, or other person whom the court in its discretion considered should be allowed to intervene; the intervention to be upon such terms as the court might think just.

295. We also think that certain provisions should be introduced, analogous to those which are adopted by the court with regard to cases of nullity on the ground of impotence. For the purpose of these cases, there are attached to the court medical experts; a report by two such experts is required in nullity cases, based on impotence, and is laid before the court, and one or both of the experts, as may be necessary, have to be called as witnesses, but at present no special provision is made for their expenses in poor cases. We recommend that for the purpose of dealing with insanity cases medical experts should be appointed by the court or other competent authority, and that the experts' fees should be paid by the applicant, except where the court should otherwise order. These expenses should form part of the establishment expenses of the court, if the judge certifies that the party requiring to call them has not sufficient means for the purpose.

We suggest that a definite fee might be fixed at the time of the general appointment of the experts for these poor cases. This question of providing money, where the party has no means, will be one for the consideration of the Legislature. Cases of impotence might be similarly dealt with.

296. With regard to defences, besides a denial and such other defences as may be applicable, it is suggested that cases will have to be considered where insanity has been brought about by the misconduct of the petitioner, and that in some cases the husband's conduct has been the "immediate and direct cause of the wife's insanity" (41,057; *see also* 35,911). It is said, "some insane patients are made "insane by sexual perversions of their marital partners" (34,401). Probably these cases would not come within those incurable after five years, but if they did, it should be a sufficient answer to prove that the insanity was brought about by the petitioner. It might be difficult to prove this, but this difficulty, if it should arise, is not enough to weigh against the general considerations in favour of divorce on the ground of insanity.

297. We think that, before concluding our remarks on the subject of insanity, we should refer to the evidence which has been given before us upon principles of eugenics. Sir Thomas Clouston says: "I and a very considerable number of the medical profession "and of scientists, interested in what is now called eugenics, regret that the scope "of the enquiry of this Commission could not have included questions relating to "the marriage of persons with an extremely bad mental and nervous heredity, with "criminality, and with positive signs of degeneration, and the prevention of fatherhood "and motherhood on the part of those almost certain to produce a diseased and bad "stock of citizens in the future. Many of us feel that the prevention of mental "disease and of imbecility would also imply the prevention of much vice, criminality, "and ineffectiveness among our citizens" (34,030).

There is a considerable body of medical and other evidence from the eugenic point of view. It is directed to two main points. The first is the desirability, in the interests of the race and the State, that persons, who are unfit to enter into the state of matrimony and propagate healthy children, on account either of mental or physical infirmity, should not be permitted to do so. The second is that, in the same interests,

measures should be taken to prevent intercourse between married persons who become unfit to have healthy children for similar reasons.

We do not think that questions affecting the formation of marriage and the laws which should govern its formation are within the scope of our inquiry, though later on we shall notice some points connected with these questions which fall within our inquiry. We therefore only draw attention to the great importance of the first point.

With regard to the second point, although from the national point of view its importance is equally great, yet it seems to go beyond the questions directly involved in divorce, the right to which, in our opinion, rests upon the practical impossibility of the continuance of married life, and the frustration of its objects. It involves the consideration of the proper course to take, where these results do not follow, as, for instance, cases in which a person is insane at one time, but has long intervals of sanity. In these cases as between the parties, married life, though interrupted, is not completely ended nor all its objects frustrated.

298. These points, while deserving careful consideration, and possibly action with regard to them, are directed to the prevention of the propagation of a degenerate race, and do not appear to us to fall strictly within the consideration of the law and its administration in divorce and matrimonial causes.

299. We think it desirable to call attention to certain defects, which it is said exist in the Lunacy Acts, on the following points, namely:—

(1) That the sane spouse can obtain the release from an asylum of the insane spouse before convalescence is fully established, in defiance of medical opinion opposed to such release. (*See* 34,232, 34,280–3.)

(2) That patients subject to recurrent insanity are allowed out of confinement during the intervals between the attacks, and in such intervals, may, if married, resume marital relations. (*See* 34,234, 34,401.)

(3) That married patients, allowed out of asylums on probation, are allowed to resume marital relations while still on probation.

(4) That there are no provisions by which a person, whose sanity is open to question, can be restrained from cohabitation against the wish of the other party.

It does not seem to be within our province to make any specific recommendations upon the above matters, which involve the amendment of the Lunacy Acts, rather than any questions submitted to us for the purpose of inquiry and report.

300.—(6) *Habitual Drunkenness.*—This is a ground at present for a separation order in favour either of a husband or a wife under the Licensing Act, 1902, but the High Court has no jurisdiction to grant a separation upon this ground. This latter point will be dealt with under the head of amendments of the present powers and practice of the court (Question VII., p. 116). Here it will be sufficient to mention that, although cases amongst the well-to-do classes are probably not so frequent as amongst the lower, the High Court should have this jurisdiction, just as much as courts of summary jurisdiction.

301. Drunkenness is a ground of divorce in the following countries:—Bulgaria, Sweden, New Zealand, New South Wales, and Victoria, and in certain other countries the provisions of their laws, as to separation followed by divorce, may practically cover this ground.

302. It is the view of all the witnesses examined on this point that the use of alcohol to excess is a source of misery of the most serious character. Some of them place drunkenness as being at the root of most of the trouble in married life. But no suggestions have been made to make drunkenness *per se* a ground either of separation or divorce; all proposals relate to cases of habitual drunkenness.

303. It seems probable from the evidence given before us that habitual drunkenness produces as much, if not more, misery, for the sober partner and the children of a marriage, as any other cause in the list of grave causes. Such inebriety carries with it loss of interest in surroundings, loss of self-respect, neglect of duty, personal uncleanliness, neglect of children, violence, delusions of suspicion, a tendency to

indecent behaviour, and a general state which makes companionship impossible. This applies to both sexes, but in the case of a drunken husband, the physical pain of brute force is often added to the mental and moral injury he inflicts upon his wife; moreover, by neglect of business and wanton expenditure, he has power to reduce himself and those dependent upon him to penury. In the case of a drunken wife neglect of home duties and of the care of the children, waste of means, pawning and selling possessions, and many attendant evils, produce a most deplorable state of things. In both cases the ruin of the children can be traced to the evil parental example. The same remarks apply to the abuse of drugs other than alcohol, such as morphia, cocaine, &c. (*See* Dr. Branthwaite's evidence, 41,309–12.)

304. At present, the parties may be permanently separated by order of a court of summary jurisdiction on the ground of habitual drunkenness as defined in the Act of 1879, as we have already stated. But examination into this matter, in which we have been assisted by the evidence of Dr. Branthwaite, His Majesty's Inspector under the Inebriates Act, has led us to the conclusion that the law with regard to separation by order is in a very unsatisfactory condition.

305. In the first place, we consider that the definition suggested by Dr. Branthwaite already given above (p. 71) should be adopted.

306. Then we notice that the order is obtained upon evidence of a state of things which exists at the time of the order, without any regard to previous conditions, or any provisions for subsequent modification or termination, and even when, previous to application for separation, no adequate effort may have been made to control the respondent in the use of drink, or to rescue him or her from drinking habits. No obligation is laid upon anyone to make any such effort after separation, and no provision is made for the modification of the order in case of subsequent improvement in the state of things existing at the time of separation. (Section 7 of the Act of 1895 gives certain powers to the court to alter, vary, or discharge an order, but it is understood that those powers have not been regarded as wide enough to meet the point referred to.) The result of the order is that the respondent is practically turned adrift, without anyone to look after him or her, and without any effort being made to redeem him or her. The matter is looked at solely from the point of view of the applicant, and without any consideration, from a general public point of view, of what ought to be done for the inebriate, in the interests of his family and of the State. The case of the inebriate wife, and the case of the inebriate husband, are fully stated by Dr. Branthwaite (41,309–12).

307. In our opinion, an order of separation, on the ground of habitual drunkenness, should still be possible, so that immediate relief may be afforded to the sober spouse; but such order should be granted on definite conditions, and should be of a temporary character only. No separation order should be granted unless the applicant can satisfy a court of summary jurisdiction that such proper means as were at his or her command have been used to bring about the reform of the drunken spouse, and that the habitual drunkenness has not been brought about by the applicant. No separation order should be granted by such court for a longer period than two years.

308. During the currency of such order, the court making the order should have power to compel the inebriate to submit himself or herself to treatment or control on the lines recommended by the Departmental Committee on the Inebriates Acts in 1908. The means used by the court would range from a compulsory pledge of abstinence to guardianship or compulsory committal to an institution for the treatment of inebriates, the severity of the means employed being dependent upon the success or failure of milder measures.

309. A husband may, notwithstanding his drunken habits, be capable of earning some means. In that case we think that the application for committal should require the consent of the wife, reliance being placed, as an alternative, upon any other suitable arrangement or treatment likely to bring about the reform of the drunkard, such as medical care, friendly control, or compulsory guardianship. The difficulty of carrying out this suggestion would be generally the question of means, but we think power might be given, when there are means to provide for the inebriate's treatment, control or maintenance; that is to say, when the applicant can find the means, the order might be made. If, however, there are no means for that purpose, there will be difficulty on

the part of the court in making the order. It then becomes a question for the Legislature to determine, whether in such cases the State or local authorities should provide the means necessary for the purpose in the public interest, and in that of the offender, his wife, and children. A drunken person without means, separated from the influence of a sober spouse, especially if that person be a woman, is likely to become a permanent burden upon public funds as an inmate either of a workhouse, inebriate reformatory, prison or asylum, unless some strenuous effort is made at reform. In his report for the year 1909 under the Inebriates Acts, 1879 to 1900, Dr. Branthwaite states on p. 7 that "it is highly probable that from 97 to 98 per "cent. of all persons in the kingdom who become habitual drunkards, die drunkards; "or become (more or less permanent) inmates of workhouses, prisons, or asylums." It seems reasonable to assume that some expenditure from public sources directed to reform might save a considerable amount of permanent burden.

310. It is with the poorer classes that a court has generally to deal in this matter, and the application should be made to the court of summary jurisdiction, if payment of not more than 2*l.* per week is required, but to the High Court where a larger sum is needed.

311. Then comes the question what ought to be done, if the applicant can provide no means, and the Legislature does not provide for assistance by the State or local authorities. In that case, we still think that only a temporary order of separation should be made in the first instance, so as, at any rate, to give an opportunity to the offender of redeeming himself or herself.

312. Following out the scheme which we have already suggested as to the duration of the orders of the court of summary jurisdiction, we think, as just stated, that the duration of a temporary order by the court of summary jurisdiction should in no case exceed two years. If the temporary order does not prove effective, an application should be made to the High Court of the district for an order to continue the former order, if the court considers that a further period of probation would be productive of advantage, and to continue or repeat the treatment or detention of the offender for such time as the court thinks fit, not exceeding a period which would expire at the end of three years from the first order made on the ground of habitual drunkenness, the question of means being dealt with in the same way as already suggested.

313. If at the expiration of three years from the first order of separation there is no reasonable prospect that the drunkenness of the respondent will be effectively cured, and of the resumption of joint married life, then, upon application made for that purpose, the High Court should be entitled to grant a decree of judicial separation, or of divorce, on the principles which we have already indicated. According to the evidence which we have had before us, a case of drunkenness, after such a time as aforesaid, may be regarded as hopeless and incurable, and the married life is in fact determined. The position is as serious as that in which a respondent has deserted the applicant for three years, or is an incurable lunatic.

314. If, at the end of three years the respondent is still a habitual drunkard, but the court is not satisfied that the case is hopeless, it should have power to continue the order, if necessary, until the position becomes such as to enable the court to dispose of the case finally by decree of divorce, or judicial separation, or discharge of the order.

315. Whilst we are strongly of opinion that permanent separation now allowed by law should be replaced by divorce whenever incurability is proved, we desire to emphasize the necessity for the employment during temporary separation of every available means for reform, and to suggest that, whenever possible, these means for reform should include detention, for periods of not less than twelve months in the aggregate, in some institution specifically designated and licensed for the purpose, before incurability may be considered as proven.

316.—(7) *Long-continued Imprisonment.*—The question of whether divorce should be granted in cases of imprisonment for long terms is practically confined to sentences of penal servitude. Expressions of opinion for and against this as a ground of divorce have been given by various witnesses amongst whom were Mr. Basil Home Thomson,

secretary to the Prison Commission; Dr. John Benson Cooke, principal medical officer of His Majesty's prison at Wakefield; Dr. William Henry Winder, governor of the prison at Aylesbury; Dr. Oliver Fereira Naylor Treadwell, medical officer of the convict prison at Parkhurst, and medical superintendent of the asylum at Parkhurst; and Mrs. Mary Hodder, visitor for the Church Army in the department which concerns prisoners' wives and families.

317. The law makes sentence for crime a ground of divorce in Austria, Hungary, Belgium, Bulgaria, Denmark, France, The Netherlands, Norway, Roumania, Russia, Sweden, Switzerland, New Zealand, New South Wales, Victoria. The details, such as the length of sentence, will be found in the statement already given of the laws of these countries.

318. The following table from the Criminal Judicial Statistics for 1910 for England and Wales, published in 1912, shows the number of persons undergoing such sentence and the length of sentence of convicts in prison on the 31st December of the former year :—

TABLE XLI.—CONVICTS.—*Length of Sentences of Convicts in Prison on the 31st December* 1910.

(1) Length of Sentence.	Total Number.			Period actually served.								Number of those included in the foregoing Columns who, in addition to Sentence of Penal Servitude, are liable to serve Remanet of former Sentences.				(17) (Not included in the preceding Columns.)
													Length of Remanet.			
	(2) Total.	(3) Males.	(4) Females.	(5) 1 Year and under.	(6) 2 Years and above 1.	(7) 3 Years and above 2.	(8) 5 Years and above 3.	(9) 10 Years and above 5.	(10) 15 Years and above 10.	(11) 20 Years and above 15.	(12) Above 20 Years.	(13) Total Number.	(14) 1 Year and under.	(15) 2 Years and above 1.	(16) Over 2 Years.	Court-Martial Convicts.
Life { Commuted death sentences.	113	9	15	13	11	7	23	40	16	3	—	—	—	—	—	—
Life { Original sentences	20	20	—	1	—	—	2	5	9	3	—	—	—	—	—	2
20 years - - -	35	34	1	1	1	—	5	17	11	—	—	—	—	—	—	—
15 „ - - -	70	69	1	3	7	1	10	45	4	—	—	1	—	1	—	1
14 „ - - -	14	14	—	—	2	—	3	8	1	—	—	1	—	1	—	—
12 „ - - -	37	35	2	3	3	4	7	20	—	—	—	2	—	—	2	—
10 „ - - -	167	158	9	13	21	25	39	69	—	—	—	15	2	8	5	2
9 „ - - -	6	6	—	1	1	—	2	2	—	—	—	2	—	2	—	—
8 „ - - -	33	33	—	3	6	5	13	6	—	—	—	9	2	5	2	—
7 „ - - -	288	285	3	35	51	66	105	31	—	—	—	55	21	30	4	1
6 „ - - -	61	61	—	14	15	7	25	—	—	—	—	16	8	6	2	—
5 „ - - -	908	889	19	197	226	250	232	3	—	—	—	143	77	58	8	6
4½ „ - - -	4	4	—	3	—	—	1	—	—	—	—	1	1	—	—	—
4 „ - - -	259	256	3	81	71	94	13	—	—	—	—	46	26	16	4	1
3½ „ - - -	34	34	—	8	13	11	2	—	—	—	—	5	4	1	—	—
3 „ - - -	1,482	1,430	52	655	630	194	2	1	—	—	—	246	144	83	19	5
Revoked or forfeited licences only. { over 2 years	15	15	—	9	4	1	—	1	—	—	—	—	—	—	—	—
Revoked or forfeited licences only. { 2 years and over 1.	48	45	3	43	5	—	—	—	—	—	—	—	—	—	—	—
Revoked or forfeited licences only. { 1 year and under.	76	72	4	76	—	—	—	—	—	—	—	—	—	—	—	—
Total - -	3,670	3,558	112	1,159	1,067	665	484	248	41	6	—	542	285	211	46	18

From this table it will be seen that out of a total of 3,670 convicts, 3,175 had been sentenced for seven years and under.

The following table supplied to us by Mr. H. B. Simpson, C.B., of the Home Office, shows the number of prisoners sentenced as habitual criminals under the Prevention of Crimes Act, 1908, up to the 15th May 1911 :—

	Males.	Females.
Number sentenced to date - - - -	242	3
Quashed by court - - - -	6	—
Special licence granted - - - -	1	—
Suicide - - - - - -	1	—
Remitted by Secretary of State - - -	3	—

319. Amongst the witnesses, who expressed views upon the question of imprisonment for long periods being a ground of divorce, there was a great difference of opinion. With regard to those who had special experience, Mr. Thomson stated:—

"40,480. Then you have made an additional note?—'On 6th August, a circular 'was addressed to 27 persons who have had experience of convict prisons, 'including the governors, chaplains and medical officers of all the convict 'prisons, inviting their views, supported if possible with actual instances '"showing the hardship or the advantage of maintaining the marriage relation '" when the husband or wife is undergoing a long term of penal detention." 'Of these 27, 3 gave no opinion; 7 were in favour of a long sentence being a 'ground for divorce, and 17 were against it.'

"40,481. Now can you give a summary of, first, those in favour of a long sentence being a ground; and then, secondly, the reasons of the 17 that were against it. Can you summarise it? I believe you have a memorandum which Captain Wilmot sent which summarises it. If you have not got it, it does not matter?—No, I have not got it, my Lord. Out of the 17 against it, I think all the chaplains were against it on religious grounds.

"40,482. That is what I want. Can you tell me how many of the 17 were chaplains?—I think nine, my Lord. By going into the other room I could get the actual figures.

"40,483. Perhaps you had better?—(*After a short pause.*) Eight were chaplains, my Lord.

"40,484. Do they base their views on religious grounds?—Yes, nearly all of them."

The evidence of the Lord Chief Justice was strongly adverse to making imprisonment, in any case, a ground of divorce (15,525–8).

320. It was said that it might be considered a hardship, if the liability to a divorce were added to a criminal sentence, and that it would thus become, as it were, a part of the punishment, and this might probably have an effect upon the sentence passed. This consideration is especially applicable to prisoners of the "star class," that is to say, prisoners who have never been previously convicted, and who are not habitual criminals, or of corrupt habits.

It was pointed out that, at least with short sentences, it may reasonably be expected that it would be a powerful influence upon married prisoners to be able to look forward to rejoining their spouses and families. This consideration is of great importance, when we bear in mind the modern trend of dealing with criminals, which is, while adequately employing punishment as a deterrent, at the same time, if possible, to produce reform of the criminal. It will also be observed that the number of those who are confined for periods above seven years is small, and that, of the persons so confined, there would probably not be a large number of married prisoners. We have not found it possible to ascertain how many prisoners are married.

321. Our conclusion after careful and anxious consideration of this point is, that with one exception, imprisonment should not be a ground of divorce.

322. We think that exception should be made in the case of a person who has been condemned to death, and whose sentence has been commuted to that of penal servitude for life. But for the commutation of the sentence there would, in fact, have been a dissolution of the marriage tie, and cases of this kind involve imprisonment for life, with any such reduction as good behaviour and other circumstances may warrant.

323.—(8) *Disease.*—In some countries, certain contagious diseases are regarded as grounds of divorce, such, for instance, as venereal disease and leprosy. In this country we need not consider the case of leprosy, which arises in certain countries and requires compulsory separation, for practically it is not met with here. With regard to venereal disease, it is unnecessary to make it a ground, for, if acquired after marriage, it is usually proof of adultery, for which a divorce can be obtained against a wife, and, if our recommendation be adopted, it would be obtainable against a husband without proof of any other cause. If acquired before marriage, and then existing and not disclosed, we think that suggestions which we make hereafter (p. 118), under the head of nullity of marriage, if adopted, would meet the case.

324.—(9) *Unconquerable Aversion*, or what is termed *incompatibility of temper*. This receives support from some writers and from some evidence, and is to be found in some foreign laws. The observations of Bentham, in his "Theory of Legislation," (4th edition, p. 221 *et seq.*), are deserving of study. It is said by some that, in this country, attention is too exclusively directed to physical grievances, that consideration of the psychical side of the married relationship is neglected, and that incompatibility may produce almost as much hardship as physical acts. It is enough to say that satisfactory definition is practicable in the one case, whereas in the other it is impossible for any court to separate incompatibility from mutual consent.

325.—(10) *Mutual Consent.*—Some persons consider this as the only solution of the difficulties of married life under the conditions of modern civilisation; and divorce at the will of one party, subject to suitable restrictions, has even been advocated by others. These suggestions have met with little support from any of the numerous witnesses who have been called before us, and are not likely to meet with any substantial support at the present day in England. This and the previous cause are not recognised as necessarily putting an end *de facto* to married life, as do the causes to which we have already referred.

Accordingly, we do not recommend these two causes as grounds of divorce.

326.—(11) *Refusal to perform Conjugal Duties.*—If the refusal results from incompetence, a decree of nullity may be had. If it is simply wilful, and there has been no intercourse, the court has, in some cases, regarded the refusal as evidence of incompetence, and pronounced a decree of nullity. We think that wilful refusal, where there has been no intercourse, should be made a ground of nullity, without the indirect method of inferring incompetence.

327. But if there has been intercourse and then refusal to continue without reasonable cause, this course could not be adopted. We have already suggested that refusal to permit of intercourse, without adequate reason, if persisted in for three years, should be treated as desertion. We recommend that refusal without reasonable cause to perform conjugal duties, where there has been no intercourse, should be made a ground of nullity, and that when there has been intercourse and such persistent refusal as aforesaid, desertion may be held established. We understand that in some cases refusal has been allowed to be used as a ground of defence, namely, where desertion is alleged to have taken place, and this ground is alleged as a reasonable cause for the desertion, or where a respondent is charged with adultery and alleges refusal of conjugal rights as a defence, as amounting to desertion, or where a suit is for restitution of conjugal rights and this ground is set up as a defence justifying such refusal. But, if necessary, this should be so declared.

328. With regard to what is reasonable cause, we may add that this is not capable of definition which will cover all possible cases, but we have already referred (p. 72) to the way in which it is and should be dealt with, in that part of our Report which deals with the magistrates' jurisdiction. It seems to be sufficient to leave this point to be dealt with in a similar manner.

Conclusion.

329. We recommend, as grounds for dissolving marriage:—

(1) Adultery (including in the term the acts above mentioned).
(2) Wilful desertion for three years and upwards.
(3) Cruelty.
(4) Incurable Insanity, after five years' confinement.
(5) Habitual Drunkenness, found incurable after three years from first order.
(6) Imprisonment under commuted death sentence.

PART XVI.

QUESTION VII.—ARE ANY OTHER, AND IF ANY OTHER, WHAT AMENDMENTS NEEDED IN THE LAW, PROCEDURE, AND PRACTICE RELATING TO DIVORCE, NULLITY OF MARRIAGE, AND OTHER MATRIMONIAL QUESTIONS?

330. Under this head, a number of questions require consideration—questions which relate to jurisdiction of the court, changes in the law which may be desirable, and certain detailed matters of procedure and practice.

CHAPTER I.

JURISDICTION AND LAW.

331.—(1) *Jurisdiction as affected by Domicil.*—Jurisdiction in divorce is exercised by the English court, in the case of parties who are domiciled in this country. The domicil of the parties is that of the husband. The wife, after marriage, has the domicil of her husband. If the parties, even though British subjects, are not domiciled in England, the court does not exercise jurisdiction in divorce, but leaves them to proceed in the courts of the country in which they are domiciled. If the parties are of foreign nationality, but are domiciled in this country, the court will exercise its jurisdiction. It was at one time considered that residence of the parties in the country was sufficient for the purpose of founding jurisdiction, unless it were of a mere passing character (*see Niboyet* v. *Niboyet* (L.R. 4 P.D. 1)), but the law has been clearly settled, principally by the case of *Le Mesurier* v. *Le Mesurier*, (1895), A.C. 517, that domicil and not residence is the test.

332. In the ordinary case, these principles do not cause inconvenience, for (although the domicil is in some cases a matter of doubt, the factor of intention entering into the consideration of the matter) most cases are those of English people, about whose domicil there is no question.

333. There are, however, many cases in which a divorce may be claimed, where jurisdiction based on domicil presents difficulties. Some of these require special attention.

334. There is a difficulty affecting numerous persons, whose domicil is English but whose work in professions or businesses requires them to reside for long periods abroad. We cannot make any suggestions as to these cases, where the residence is in a foreign country: British persons domiciled in England, but resident in a foreign country, must proceed in England, for in those countries which proceed on the principle of domicil, they would be unable to obtain relief, and in those which proceed on nationality, their nationality would be in the way.

335. But a grievance has been pointed out to us with regard to English men and women, who are domiciled in England, but are resident in India, the Colonies, or any British possessions. According to our law, a divorce suit between such persons must be brought in England, and, although there are British courts in the place of their residence, those courts cannot pronounce a decree, which will be recognised in England, although the decree may be recognised in the place of residence. Many of these people have neither the means, nor the time, to leave their place of residence and proceed with their cases in England. Difficulties of this character were pointed out to us by the Right Hon. Ameer Ali and the Chief Justice of Hong Kong. It is suggested that persons in this position might have their cases disposed of in the place of their residence, and that the decree might be registered in the Divorce court in England, if made upon grounds recognised in England, and that, upon such registration, it should become operative as a decree nisi in both countries.

336. It would not be difficult to introduce into legislation for the United Kingdom a provision for the purpose of carrying this suggestion into effect, but, to become effective, changes to carry it out would be required in the laws affecting other parts of the British Empire, to enable their courts to assist in it. If the Indian or Colonial or

other British courts were authorised to act between parties resident within their jurisdiction, subject to their decree becoming operative on registration in the court of the domicil, the necessary changes would not be difficult. Another suggestion to meet this difficulty is the following: parties to an English suit must either give the evidence in the English court here, or by means of a commission. If they are resident, say in India, it seems absurd that the proceedings should be in England and the evidence taken in India on commission. A means could be provided for the courts of the residence, at request from the court in England, to try the case where the parties and their witnesses reside, and to send the record home for decree.

337. Many of the difficulties, which surround the subject of jurisdiction, may, according to some jurists, be removed by adopting the principle of nationality, instead of that of domicil, so that the courts of a nation should exercise the jurisdiction over its subjects wherever they are domiciled.

We venture to suggest that the time is not ripe for making a recommendation on the subject of such a change. The principal reason for this is that there is no uniform national law for British subjects. England, Scotland, Ireland, the Channel Islands, India, and the Colonies all have different laws on the subject of divorce, and so long as these diversities are allowed to remain, it will be necessary to inquire into the question to which part of the Empire the parties belong, in other words, where they are domiciled, and, further, it may be more convenient to proceed in the country of domicil than in the country of nationality.

338. We also refer to one amendment suggested by the Right Hon. Ameer Ali, that is, altering the law which confines the jurisdiction of the courts in India to cases where the parties have been married in India.

The suggestion is that the restriction to marriages contracted in India should be removed, so that, so long as the court has proper jurisdiction over the parties, its powers should be exercisable, whether the marriage took place in India or elsewhere. But we think we ought to notice that, unless the parties are domiciled in India, the decrees of the court there are not recognised in England as dissolving the marriage.

339. We therefore recommend generally that British subjects should be permitted to have their cases tried in the place of their residence within the British Dominions, and that the decree, when registered in the place of the domicil, be operative as if made there, if made on grounds permitted by the law of the domicil.

340. If a case coming under this recommendation should be heard in England, we recommend that the trial should be in London in the Probate, Divorce, and Admiralty Division of the High Court.

341. Whether the above recommendations be adopted to the full extent or not, we suggest, as to India, that the courts there should have power to hear proceedings, if within their jurisdiction, even if the parties have not been, as at present required, married in India.

342. We are aware that some of these recommendations and suggestions are outside the strict scope of our inquiry, but the position of British subjects domiciled in England and resident elsewhere in the Empire is, in our opinion, within the terms of our Commission, and we have thought it right to point to matters which show that the general position of British subjects is not satisfactory, and will not be so, until it is placed on a more Imperial basis.

343.—(2) *Jurisdiction where Wife deserted, &c.*—As the wife's domicil is, according to our law, that of her husband, it follows that in strictness if he deserts her, and proceeds abroad with the intention of acquiring a new domicil, he can defeat her case unless some provision be made to protect her. Most if not all the cases of this kind have been undefended cases, and the difficulty has been got over by adopting the view, in order that justice may be done, either that the husband cannot be permitted to say in such a case that he has changed his domicil, or perhaps that the wife may be treated as having, by her husband's act, acquired a domicil of her own. The point is referred to by the late Lord Esher (then Lord Justice Brett) in *Niboyet* v. *Niboyet* (L.R. 4 P.D. 14).

344. The question has never been raised in a contested case, and it seems desirable to free the matter from all difficulty by declaring that, where the parties are domiciled within the jurisdiction at the time of the commencement of the desertion, the wife may maintain her suit, as if the domicil remained what it then was. To meet other cases, it should be declared that, if the parties are domiciled in England at the time of an act giving a ground of divorce, no change of domicil since that act should be permitted to oust the jurisdiction of the court founded on such act, if the suit be instituted within a year of the act on which the petition is founded.

345.—(3) *Jurisdiction in cases under the Aliens Act.*—The evidence of Mr. Pedder (Vol. III., p. 393 *et seq.*) shows that, in a considerable number of cases, a foreigner, who has married an English woman, is sent out of the country for criminal offences in circumstances which make the woman unwilling to accompany him. One class of such offences is that of the husband compelling his wife to prostitute herself for his benefit: *see* the Vagrancy Act, 1898 (61 & 62 Vict. c. 39. s. 1 (1, 2, 3)). In such a case, she may have no ground for divorce (though, if cruelty be adopted as a ground of divorce, she would have), but even if she have a ground for divorce, she would not be able to maintain a suit at present, for her husband would not have an English domicil.

346. We recommend that the court should have power to entertain any matrimonial suit of a wife, whose husband has been deported under the provisions of the Aliens Act, which the court would have been able to entertain, if the person so deported were domiciled in England.

347.—(4) *Jurisdiction with regard to Divorce and Separation in cases of Habitual Drunkenness.*—If divorce be given for this cause, jurisdiction to deal with it should be given to the High Court. In any event, jurisdiction to grant a judicial separation for this cause should be given to the High Court. Although cases of separation on this ground may not be common among the well-to-do classes, it seems clear that power to deal with such cases as would not at present be brought before magistrates and justices because of the money limit should be given to the High Court in a similar way, so far as temporary orders are concerned, and by final order, if necessary.

348.—(5) *Jurisdiction in cases of conflict of Laws.*—The case of *Ogden* v. *Ogden*, (L.R. [1908] P. 46), brought prominently forward a serious difficulty produced by the conflict between English and French law. That case followed *Simonin* v. *Mallac* (1860), (2 Sw. & Tr. 67).

The head note to the case is as follows:—

> "In September, 1898, a ceremony of marriage in English form was celebrated in England between a domiciled Englishwoman and P., a domiciled Frenchman. By a decree of the French Court in November, 1901, this marriage was annulled, on the ground that the consent of the parent, as required by French law, had not been obtained. P. subsequently married a Frenchwoman in France. In July, 1903, the Englishwoman instituted a suit in England for the dissolution of her marriage with P. on the ground of his adultery and desertion. This suit was dismissed for want of jurisdiction. In October, 1904, the Englishwoman went through a ceremony of marriage in England with O., a domiciled Englishman, describing herself as a widow:—
>
> "*Held* (following *Simonin* v. *Mallac*, (1860) (2 Sw. & Tr. 67), and *Sottomayer* v. *De Barros*, (1879) (5 P.D. 94), that the lex loci contractus must prevail, and that this later marriage was bigamous and must be annulled at the suit of O.
>
> "Decision of Bargrave Deane J., [1907] P. 107, affirmed.
>
> "*Quære* whether, in circumstances like the present, the Court ought not to have assumed jurisdiction in the wife's suit for the dissolution of her first marriage by treating her as having a domicil in her own country sufficient to support a suit of this kind."

349. The proper remedy appears to be to enact that, where the courts of any other country, in the exercise of jurisdiction conferred upon them by the law of that country, declare a marriage null, the English court shall be at liberty to pronounce it null also, even though it may have been celebrated in accordance with the law of the place of celebration.

350.—(6) *Jurisdiction in Nullity Cases.*—At present, the court has jurisdiction to declare a marriage null in certain cases where the marriage is void or is voidable, as, for

instance, where there has been no marriage by reason of want of consent, or duress, or consanguinity, or prior marriage and spouse living, or where the respondent is impotent. It is immaterial for the present observations to consider which are void, and which voidable.

In England, it is required that, in order to constitute a valid marriage, each of the parties should, as regards age, mental capacity, and otherwise, be capable of contracting marriage; should not by reason of kindred or affinity be within the prohibited degrees; should be unmarried; should freely consent to marry each other, understanding the nature of the contract; and that certain forms and ceremonies should be observed. Misrepresentation, even though fraudulent, or concealment does not, apart from duress or imbecility of mind amounting to insanity, affect the validity of a marriage, to which the parties freely consent, with a knowledge of the nature of the contract. In cases, however, where there is no real consent, as when a person is induced to go through a ceremony of marriage by threats or duress, or in a state of intoxication, or in an erroneous belief as to the ceremony, the marriage is invalid.

It follows that, where a marriage is invalid, it may be decreed null and void, though, if the marriage were between persons under the ages of consent, the marriage would seem only to be voidable and to be capable of ratification, but, except in that class of case which is not met with now-a-days, impotence is the only cause for which a marriage, though not void, may be avoided. If one of the parties be, at the time of marriage, through malformation, or otherwise, in a condition which renders consummation practically impossible the marriage may be avoided by a declaration of nullity by the court in the lifetime of the parties. As a rule, the party who is fit must be the petitioner, though there appear to be some rare exceptions to this rule. (*See* Rayden on "Practice and Law in the Divorce Division," p. 52.)

351. The result is that however much a person may be deceived into marriage by fraudulent statements or concealment of facts by the other party, or however unfit for marriage the other party may be, unless the unfitness amounts to impotence, the marriage is binding. The law on this point was considered by the late Lord St. Helier in the case of *Moss* v. *Moss*, (L.R. [1897], P. 263), a case which will be referred to in the third class of case with which we propose to deal.

Misrepresentations and concealments inducing a marriage are not treated in the same way as frauds inducing an ordinary contract, which can be set aside or dealt with on the footing of damages, for, in marriage, the status is altered and the rights of others may be affected. Moreover, if the courts were to investigate such questions, a flood of litigation might take place.

352. At the same time there are cases, which are analogous to cases of impotence, and in which one party is really unfit to marry, and ought not to do so in the interests of the other party, or of possible children, or of morality. It is eminently desirable that marriages should not take place between persons unfit to marry, and many medical opinions were expressed before us as to the desirability of taking steps to prevent such marriages, and, indeed, we were informed that steps in this direction have already been taken in America.

We do not think that any practical suggestions were made to us on this point.

353. But there are certain classes of case in which a party should, in our opinion, have a right to obtain a decree of nullity, on the ground that the respondent is unfit to marry and has not disclosed the fact, and it is not known to the other party, and where, in the interests of the complaining party, and of possible children, and of the State, and of morality, the marriage should not be held binding.

They are the following:—

(*a*) First, where one of the parties is of unsound mind at the time of marriage, it is said that, both in the interests of the other party and in the interests of possible children and of the State, the latter party should be entitled to claim a declaration of nullity. This is to meet cases where the party, though of unsound mind, is sane enough to be held to have consented, and yet is not sane enough to marry and procreate children. It would not be necessary for such a declaration that there should be proof of concealment. The mental state might be unknown, or undeveloped, until at or shortly after marriage, but the consequences of holding persons to such a marriage may be disastrous to them and to possible children.

We recommend that a party to a marriage should be entitled to petition for a declaration of nullity when the other party, though of sufficient understanding to consent to a marriage, is, at the time of the marriage, either of unsound mind in other respects, or in a state of incipient mental unsoundness, which becomes definite within six months after marriage, and the first party is at the time of the marriage ignorant of the defect; and that this right be limited to cases where the suit is instituted within a year of the celebration of the marriage, and there has been no marital intercourse after discovery of the defect.

We further recommend that where intercourse, taking place before the discovery of the truth, has resulted in the birth of a child, the court should have power to make orders as to the maintenance, custody, and education of any such child.

In order to avoid repetition, we recommend that this last-mentioned power should also apply in the following two cases.

(*b*) A second suggestion was made to us with regard to cases of unfitness for marriage, where one of the parties is subject to epilepsy or to recurrent insanity. As the result of our consideration of the evidence, we recommend that a party to a marriage should be entitled to petition for a declaration of nullity, where the other party is, at the time of marriage, subject to epilepsy or to recurrent insanity, and such fact is concealed by such party or his or her parents or either of them, or anyone who has control over such party and is aware of the intended marriage, from the first party, who remains ignorant of the fact at the time of the marriage; and that this right should be limited to cases where the suit is instituted within a year of the celebration of the marriage, and where there has been no marital intercourse after the discovery of the defect.

(*c*) A third suggestion is that, where one of the parties is at the time of the marriage suffering from a venereal disease, in a communicable form, and the fact is not disclosed by the party or such other person as aforesaid, to the other, who is ignorant of it at the time, the latter party should be entitled to a declaration of nullity. A venereal disease acquired after marriage is practically a ground of divorce, being almost always proof of adultery. According to the evidence and on general grounds, it seems probable that the power to exercise such a right as is suggested in the hands of a complaining party would promote the interests of morality, and also aid the complainant in being able to avoid being subjected to the possibility of contamination to himself or herself or possible children. The medical evidence given before the Commission, particularly that of Mr. J. Astley Bloxam, F.R.C.S., consulting surgeon to the Charing Cross Hospital and the Lock Hospital, as to the prevalence of venereal diseases (syphilis and gonorrhœa), the misery which they occasion, the sterility, and the dire effects upon the injured party, and the consequences to children, proves the importance of every effort being made to prevent or modify these evils. The power which is suggested would have a valuable influence in the direction of morality and of preventing marriage taking place in improper conditions.

Mr. Bloxam's evidence is given in Vol. III., p. 389. Several other medical experts gave evidence much to the same effect as that given by Mr. Bloxam.

We therefore recommend that, where one of the parties at the time of the marriage is suffering from a venereal disease in a communicable form, and the fact is not disclosed by the party or, if they know of it, by his or her parents, or either of them, or anyone who has control over the party and is aware of the intended marriage, to the other party, who remains ignorant of the fact at the time, such other party shall be entitled to obtain a decree annulling the marriage, provided that the suit is instituted within a year of the celebration of the marriage, and there has been no marital intercourse after discovery of the fact aforesaid.

(*d*) A fourth class of case in which a decree of nullity is suggested is where a woman is found to be pregnant at the time of marriage, her condition being due to intercourse with some man other than her husband, and such condition being undisclosed by her to her husband, who is ignorant of the fact at the time of marriage. The point was raised in this class of case as to whether, according to present law, the husband was entitled to a decree of nullity. In the case of *Moss* v. *Moss*, already referred to, the late Lord St. Helier held that he had no power to pronounce a decree. The case is not of frequent occurrence, but that it does occur appears from the evidence of Mr. Priestley, K.C. (4590), and he also states that a decree of nullity may be obtained in such a case in France, Prussia, and Austria (4589). The details of a recent case of this kind have been communicated to us. These cases are of such a

gross and fraudulent character that it seems reasonable to adopt the remedy suggested, provided a suit be brought within a year of the marriage.

354. In some of the cases just mentioned, notwithstanding the actual unfitness for marriage, intercourse may have taken place before discovery of the defect, and such intercourse may result in conception and birth of a child who would, on a decree of nullity, be illegitimate. But this result may not infrequently be met with in other cases, as, for instance, in cases of bigamy. The question of legitimation in the cases aforesaid forms part of the much wider question of legitimation of those who, under the present English law, are illegitimate, but these questions do not fall within the reference to us, and we therefore do not make any recommendation thereon, and must leave them to the consideration of the Legislature.

355.—(7) *Nullity in cases of wilful refusal to perform Conjugal Duties.*—We recommend, for reasons already given (p. 113), that wilful refusal, without reasonable cause, to permit intercourse should, where there has been no intercourse, be made a ground for a decree of nullity.

Chapter II.

Presumption of Death.

356. We have already dealt with the case of wilful desertion, but it seems necessary to consider whether, although parties have separated voluntarily and with the intention of rejoining, prolonged absence, without communication, should not afford ground for relief. In some cases, which have been before the courts, desertion has been inferred from failure to return when applied to, or from other proof, although the separation was not originally effected by malicious desertion. In this case, the desertion is held to run from the time when the separation ought to be put an end to, and is not.

357. Besides these cases, there are cases of not infrequent occurrence in which nothing can be proved except a separation and absence without news for a long time, and in which desertion cannot be proved, and yet the absence is for so long a time that the question of death arises.

At present, after a lapse of seven years, a person re-marrying in good faith cannot be found guilty of bigamy by virtue of the following provision in the Statute (24 & 25 Vict. c. 100. s. 57).

The section of the Statute referred to so far as material is as follows:—

> "Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland or elsewhere, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for any term not exceeding seven years . . . . . :"
>
> "Provided that nothing in this section contained shall extend . . . . to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time . . . . ."

But the second marriage is not valid, if the absentee be in fact alive at the time of its solemnisation.

358. We recommend that a party to a marriage, where the other party thereto has been continually absent from the first party for the space of seven years, and shall not have been known by such party to be living within that time, should be entitled to apply to the court for an order of presumption of death, and, on obtaining such order, should be entitled to contract a valid second marriage.

359. To ensure that such an order as aforesaid is properly obtained, the order should be an order nisi in the first instance, not to be made absolute for, say, six months, during which period the King's Proctor should have liberty to intervene to show cause for holding that the order was obtained by collusion or otherwise not properly obtained, and the person whose death was in question should have the power to come forward, if in existence, and require the order to be discharged, if he or she does so before any other marriage of the person obtaining the order.

360. But this does not meet all the difficulties which arise in cases where persons have disappeared, and are believed to be dead. There are cases, fairly numerous in certain ranks of life, and frequently met with in the Probate Court, where husband or wife, as the case may be, usually the husband, disappears in circumstances which would justify any reasonable person in believing that he or she were dead, and a question arises as to whether the person who has disappeared may be presumed to be dead, in order that property may be dealt with. In that court, the judge is able to direct further inquiries, and to cause notice to be given (for instance to insurance companies) and to authorise parties to act upon the presumption that the person, whose property requires administration and who has disappeared, is dead. This is done on the basis of the facts, without any specification of a limit of time beyond which the application must be made, and the result of an order so obtained is that the property of the person supposed to be deceased may be distributed, as if he were in fact dead. No practical difficulty has been found to arise in the application of this practice in the Probate Court, in cases where either letters of administration or probate of a will is necessary.

361. The suggestion, derived from this practice, is that a party desiring to re-marry in circumstances where it is reasonable for him or her to suppose that the other party to the marriage is dead, might be permitted to apply to the court to obtain a declaration, on the basis of presumption of death, entitling the applicant to re-marry.

The court, upon such a motion, would require to be satisfied that the circumstances of the departure, and the absence of news, and other matters were such as to show that the applicant was acting *bonâ fide* in making the application, and the court should adjourn the application for such time as might be necessary, as is done in the probate cases, to satisfy the court that it might safely make the order.

362. It may be noted that, in addition to the defence under the proviso above mentioned to a charge of bigamy, there is also a defence on the ground that the second marriage was contracted in the *bonâ fide* belief in the death of the other party. It was decided in the case of *R.* v. *Tolson* (L.R. 23 Q.B.D. 168), that it is a good defence to an indictment for bigamy to prove that the prisoner, even though the seven years have not elapsed before the second marriage, at the time of the second marriage, in good faith and on reasonable grounds, believed his first wife to be dead.

363. We recommend that, where a party to a marriage reasonably supposes the other party to the marriage to be dead, but the fact cannot be definitely ascertained, the first-named party shall be entitled to apply to the court, and the judge may, if satisfied that there is reasonable ground for declaring that the second party is dead, make an order so declaring, upon which order the first-named party shall be entitled to contract a valid second marriage, but similar provisions to those aforesaid, as to an order nisi followed by an order absolute, and as to discharging the order, should be made.

364. We further recommend that, in cases of the disappearance of a party to a marriage, the court should have power, on the application of the other party, and upon notice to such person or persons, if any, as the court may think fit, to make any order for the maintenance of such other party and the children of the marriage, or either of them, which may enable the applicant to obtain assistance from any funds of the absentee which may be available, and power to vary or rescind such order.

Chapter III.

Procedure and Practice.

Defences.

365. (1) *Defences in Divorce Cases.*—The defences to a suit for divorce are either absolute or discretionary.

Absolute defences are specified in the Act of 1857 as follows:—

(i) Denial of facts alleged in the petition.
(ii) Connivance.
(iii) Condonation.
(iv) Collusion.

Discretionary defences are provided for by the 31st section of the Act as follows :—

(i) Adultery of the petitioner.
(ii) Unreasonable delay in presenting, or prosecuting, the petition.
(iii) Cruelty to the other party to the marriage.
(iv) Desertion or wilful separation from the other party to the marriage, before the alleged adultery, without excuse.
(v) Wilful neglect or misconduct, which has conduced to the adultery complained of.

366. No suggestions have been made to us with regard to any change of the absolute defences, except one of a minor character which will be referred to later (p. 136).

367. With regard to discretionary defences, except adultery, the court exercises a discretion, according to the circumstances of the case; and it has regard to its powers, under section 32 of the Act of 1857, to suspend a decree until some provision is made for a wife divorced. We think these defences should remain.

368. But with regard to a defence on the ground of adultery, although the terms of the Act leave it to the discretion of the court to grant a decree, notwithstanding the petitioner's adultery, and although, if we may judge from the debates in 1857, it seems to have been contemplated that the discretion would be exercised in accordance with the circumstances of each case, the judges of the Divorce Court, shortly after its institution, held that the discretion should not be exercised, unless the case fell within some definite category of cases capable of distinct statement and recognition. These became practically limited to the following :—

(*a*) Where the adultery is committed in ignorance of fact—as where the other party is believed to be dead,
(*b*) or in ignorance of law, as where the party *bonâ fide* believed that the decree nisi dissolved the marriage.
(*c*) Where the adultery is committed in consequence of the violence and threats of the husband.

Unsuccessful attempts have been made to include other cases (*see* Rayden *op. cit.*, p. 92; Browne & Powles, on "Law and Practice in Divorce and Matrimonial Causes," (7th Edition; 1905), p. 45). The latter work seems to consider condoned adultery should not be a bar (p. 46), but the cases appear to be against this view.

In later times, the court has felt itself fettered by the earlier decisions, which probably resulted from anxiety as to the mode of exercising a new jurisdiction, and in face of those decisions, has been unable to pronounce a decree in cases in which, in the best interests of the parties, their children, and the State, it might have been desirable to do so.

The result is that the adultery of the petitioner, even though long past and condoned, is, generally speaking, a bar to divorce.

369. In some other systems of jurisprudence, *e.g.*, those of France and Scotland, it has been considered that where both parties have been guilty of adultery and their joint married life has become impossible, it is useless to continue the tie, and that in their best interests, and in that of their children, and of morality, it is desirable to permit of divorce; in effect, that the guilt of both is a greater reason for sundering the tie than the guilt of one. We would refer to the evidence of Dr. Lushington in the notes of 1844 (Q. 35–39), and to that of Lord Salvesen (6431), who states that, according to the law of Scotland, the petitioner's guilt is no bar to a suit for divorce on the ground of adultery.

370. The point thus raised has been dealt with in the evidence under the head of recrimination. The respondent by a cross-charge is able to meet the petitioner's charge, and the King's Proctor, if such cross-charge is not made, or made and not properly pressed, can and does make it in cases where he ascertains the guilt of the petitioner. His action is naturally guided by the decisions above referred to, which leave little discretion to the judge.

The views of Lord Desart on this matter are to be found in Questions 15,867–15,875. In the course of his answers he stated: "I have found a great deal of difficulty in "forming on opinion [as to recrimination], because as King's Proctor I have felt over "and over again, at any rate in a considerable number of cases, that my intervention "has done more harm than good."

371. The question then is whether such recrimination should be abolished altogether, and the law of England assimilated in this matter to the systems of law above mentioned.

372. Two views have to be considered: on the one hand, that it is contrary to good sense to maintain the tie when both parties are guilty, when there is no prospect of reuniting them or of breaking their irregular connections and when it would be of advantage to them, their children and the State, if they were freed; on the other hand, that it is contrary to the general principles of English law to permit a petitioner to sue unless he or she does so with clean hands, and that if he or she can obtain redress for the respondent's conduct, although guilty of the like conduct, then an important check upon immorality is withdrawn.

We do not think it possible to ignore either of these considerations. We think the proper conclusion is that, while misconduct on the part of a petitioner should not be an absolute bar to relief, it is undesirable, in the best interests of the community, that a petitioner should be able to rely on his or her suit being successful against the respondent, without any consideration of what his or her own conduct has been. The object of the Legislature should be to discourage immorality. It does not fulfil this object, where it places no difficulty in the way of a petitioner, who has been guilty of immorality, being entitled to sue on account of the immorality of the other spouse.

It is to be observed that petitioners who, under the present state of the decisions, feel that there is no reasonable chance of a discretion being exercised in their favour, are led to conceal their own conduct far more than they would if they felt that the case would be considered on such merits as it possesses, and the result is a very unsatisfactory state of things which is often confused with collusion. (*See* the evidence of Lord Mersey; 601–3.)

373. The position seems to be met by retaining adultery as a defence, but permitting the court to exercise its discretion, according to the circumstances of the case, and also by considering the petitioner's conduct, when it deals with the property and monies of the parties, under its powers to provide for payments, to vary settlements, and to deal with property. A check is thus provided; for no one could then act in the belief that his or her adultery was of no consequence, and yet those cases in which it would be for the best interests of the parties, their children, and the State, for a divorce to take place could be dealt with by a decree. In other words, the excessive restriction placed by decisions upon the power of the court would be removed, and what may be considered the true reading of the Statute restored. (*See* particularly the evidence of Lord Desart; 15,867–74.)

374.—(2) *Defences in Judicial Separation Cases.*—The defences in these cases are the following:—

(i) Denial of facts.
(ii) Connivance.
(iii) Condonation.
(iv) Collusion.
(v) Adultery (unless, perhaps, condoned).

Cruelty and desertion are not bars to a suit for judicial separation on the ground of adultery (*sed secus* if the ground be a less offence), unless it seems such conduct conduced to adultery.

The defences should be upon a similar footing to those in divorce. The first four defences should remain absolute, the rest, including cruelty and desertion, should be discretionary.

375.—(3) *The Defence of Condonation.*—This is the blotting out of an offence, with knowledge of the facts, not by mere forgiveness, but by such conduct as amounts to a resumption of the married life. It is a complete answer to a charge, but if a subsequent marital offence is committed, it is held that the condoned offence is revived, the condonation being treated as conditional upon proper future conduct. It was suggested by Sir Edward Clarke, K.C., that there should, in no case, be a revival of a condoned offence.

If grounds of divorce such as we recommend are adopted, the point does not become of much importance, because these questions arise, chiefly in cases of suits by women, where two offences have to be proved to found a suit, *e.g.*, cruelty and adultery in a wife's suit. If one offence has been condoned, and another of a

different kind is committed, the present rule permits of both being proved, but this will be unnecessary, if the one is sufficient foundation for the suit.

Moreover, in cases of cruelty, condonation of first acts is natural, and, if all proof of these acts be shut out, a culminating act of cruelty might not by itself be sufficient proof of cruelty. It might be productive of hardship in cases of cruelty, if the doctrine of revival were departed from.

We think that there is not sufficient ground for making any change in respect of this doctrine.

Suits for Restitution of Conjugal Rights, &c.

376. In former days, these were a reality, and an order for restitution was enforced by attachment. But, in 1884, the Matrimonial Causes Act of that year, (47 & 48 Vict. c. 68), made provision for periodical payments in lieu of attachment, for settlement of the wife's property in case of refusal to cohabit, for non-compliance with an order for restitution being deemed desertion for two years, and for custody of children.

The provisions of this Act are chiefly put in force by women, whose husbands have been guilty of adultery, but have not committed any other matrimonial offence which, with adultery, has created a ground of dissolution. It is used to obtain a decree, the failure to comply with which amounts to a finding of desertion without reasonable cause for two years, although that period has not elapsed. This, coupled with adultery, is then used against a husband to obtain a decree of divorce, or to obtain, either against husband or wife, a decree of judicial separation.

This procedure is little used by the poor on account of the cost, but frequently by those who are well off, and it has become an understood means of enabling a woman to obtain a divorce on account of her husband's adultery alone. It has become common form for the letter of demand of return, which precedes the suit, to be ignored or rejected by the husband, so that the divorce suit may easily be reached. The effect of the evidence of the late Sir George Lewis is to show that there is in these cases, in a sense, collusion (1444–52). The proceeding, as preliminary to a divorce suit, is often a sham, and will be unnecessary, if women are placed on the same footing as men.

377. We think, therefore, that section 5 of the Act should be amended by omitting so much as gives immediate rights to proceed for judicial separation or divorce. The Act is seldom used with the *bonâ fide* object of effecting a return to cohabitation, though cases of this character are not unknown. If the other provisions of the Act effect a return, the Act is useful. If they do not, it is useful for the powers as to payment, settlements, and custody of children. Therefore, we do not recommend any alterations in the other sections.

378. Some simple machinery will be required to enable the High Court to order maintenance, &c., in cases of wilful desertion without reasonable cause, or of neglect to maintain.

Although, among the poorer classes, a woman may at once obtain an order for maintenance on the ground of desertion or neglect to maintain, in cases of those in better circumstances and who require more than 2*l*. a week (the maximum allowance which the magistrates can give), there is no machinery, except that provided by the said Act, for obtaining maintenance. We think that a woman deserted, although she ought not to be allowed to obtain a permanent order for judicial separation or a divorce until the lapse of a certain time, or a woman whose husband neglects to maintain her, might be entitled to apply to the court, after commencing a suit for the purpose, to make orders similar to those which it could make on failure to comply with an order for restitution of conjugal rights, such orders to last so long as the desertion or neglect to maintain continued, or until further order, or, in the former case, until a judicial separation or divorce be obtained.

The court should have power to refuse the application, if grounds were clearly shown, which would disentitle the applicant to relief.

If the desertion continued so long as to justify an application for judicial separation or divorce, the suit might then proceed for that purpose, and the proceedings should be no bar to the running of the necessary period of desertion.

379. We have already suggested that separation orders should not be made by a court of summary jurisdiction in cases of desertion or neglect to maintain where the object is maintenance and custody, and orders so made would not be a bar to desertion running on.

In order to make this matter clear, as there have been several decisions on the subject, we recommend that it should be specified in any Act which is passed, that desertion, for which an order, not for separation but for maintenance custody and costs has been made by the High Court or a court of summary jurisdiction, should run on, either for the purpose of obtaining a permanent order or for divorce, notwithstanding the fact that the order has been made.

Reconciliation Powers of the Court.

380. Certain evidence was given on the question whether or not the parties should be required in all cases to attend before the judge, in order that he might attempt a reconciliation. Provisions of this character are to be found in some foreign codes, and it is stated that in Germany beneficial results are found in a large number of cases.

For parties in the class of life of those who appear before courts of summary jurisdiction in the cases dealt with by those tribunals, opportunity is afforded at the hearing of the summons (which could not be practically used before that time) for attempts at reconciliation which may prove successful; but in cases which come before the High Court, the better opinion seems to be that special powers of this character would be of little or no use (*see* the evidence of the late Sir G. Lewis, 1750–3); as a rule, parties to suits in the High Court have had legal advice and have carefully considered their position, and it is unlikely that judicial intervention would be useful.

We do not think that it is advisable to make any recommendation that there should be a rule as to the parties coming before the judge with a view to reconciliation. In many cases, where the respondent has deserted the petitioner or left the country, it would be impossible. At the same time, we see no objection to giving power to the Court, in its discretion, to summon the parties before it, and to see them privately. Facts may be disclosed in interlocutory applications, or otherwise, which, in some cases, might make it useful if the judge were to have the parties in person before him.

Evidence.

381.—(1) *Cross-examination.*—Formerly the parties to a matrimonial suit were not competent witnesses as to adultery, cruelty, desertion, or any other matrimonial offence. These disabilities have been removed, but it will be seen that there is still a material limitation of the right to interrogate them.

382. By section 43 of the Matrimonial Causes Act, 1857, it was provided that—

> "The court may, if it shall think fit, order the attendance of the petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of any petition; but no such petitioner shall be bound to answer any question tending to show that he or she has been guilty of adultery."

In the Matrimonial Causes Act, 1859, the Legislature went a step further, and section 6 of that Act provides that—

> "On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery, coupled with cruelty, or of adultery coupled with desertion, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion."

Finally, all restrictions on the competence of parties to give their evidence on oath in matrimonial causes were removed, and by virtue of section 3 of the Evidence Further Amendment Act, 1869 (32 & 33 Vict. c. 68)—

> "The parties to any proceeding instituted in consequence of adultery, and the husbands and wives of such parties, shall be competent to give evidence in such proceeding: provided that no witness in any proceeding, whether a party to the suit or not, shall be liable to be asked or bound to answer any question

tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence in the same proceeding in disproof of his or her alleged adultery."

383. The practical effect of these provisions is that no party nor witness, in a suit for divorce on the ground of adultery, is at present liable to be asked, or bound to answer, any question tending to show that he or she is guilty of adultery. This limitation seems to be a survival of ancient rules of evidence, intended to prevent a party from incriminating himself, although adultery is not a crime, and its effect as an ecclesiastical offence may be now-a-days disregarded (*see Redfern* v. *Redfern*, L.R. [1891], P. 139), and it does not appear to apply to all cases.

384. Further, no discovery or interrogatories to prove adultery can, in consequence of the aforesaid provision, be had or put in interlocutory proceedings, (*ib.*). The result is that, however guilty the petitioner may be, and however much the judge may suspect his or her guilt, so long as he or she confines his or her evidence to the case against the respondent, no questions can be put to the petitioner as to guilt on his or her side, and all that the court can do is to direct the King's Proctor's attention to the case. Moreover, if a respondent does not choose to appear, and the co-respondent does and fights the case, he is in a difficulty about compelling the respondent to give evidence; so also is a respondent, if a co-respondent will not contest a case. (*See* 10,293.) These restrictions should in the interests of justice be done away with. (*See* especially the evidence of the Lord Chief Justice of England, 15,731, Lord Desart, 15,779, Mr. Justice Bargrave Deane, 1063–4, and Lord Mersey, 1358–60).

385. We recommend that the proviso in section 43 of the Act of 1857, and also that in section 3 of the Evidence Further Amendment Act, 1869, (32 & 33 Vict. c. 68), should be repealed.

386. It will be noticed that one effect of the repeal would be to open the way for interrogatories and discovery of documents to prove adultery. We think, however, that interrogatories for this purpose should not be permitted. We fear that they would lead to great expense and possible abuse. Discovery of documents for the said purpose should be allowed by order of the court, if it thinks such discovery should be made. These points should be dealt with by Rules of Court.

387.—(2) *Magistrate's Order.*—The order of a court of summary jurisdiction should be *primâ facie* evidence of facts found therein, but the court should be at liberty to decline to act on it without further evidence.

Decree Absolute.

388. At present it is entirely within the power of the petitioner to apply for decree absolute, or to withhold the application, and the respondent cannot apply, and can only make application to the court to dismiss the petition, unless the petitioner proceed to make the decree absolute. This is a power which is open to abuse, and it seems desirable that the court should have power to make the decree absolute, on the application of either party, at the expiration of the proper time from the pronouncing thereof (unless there be an intervention in the meantime), and that proper notice to this effect should appear in the decree nisi. The power now vested in the court to fix a shorter time should be retained.

389. Suggestions have been made that the decree nisi should not be made absolute for a year, the present limit being six months, or at the discretion of the court less, but not less than three months. If cases were concerned only with people who were well off, there might be some advantage in lengthening the period, but as most cases are those of persons who have small means and may be compelled to make fresh arrangements, without delay, as to children and otherwise, we do not think that the suggestions have sufficient weight to make any change in this respect necessary.

390. With regard to the validity of a decree absolute, questions as to the validity of a decree have been raised long after it has been pronounced, mainly on the ground that the court had no jurisdiction to pronounce it, which is a valid objection, no matter how long after the making of the decree it is taken. This may be productive

of great hardship to innocent parties, as, for instance, where a divorced person has married again, and the latter marriage is held invalid for want of jurisdiction in the court to pronounce the decree dissolving the former marriage.

We recommend that a decree absolute should be unimpeachable, after the expiration of five years from the time when it was made. It would not be practicable to make this provision apply only where innocent third parties are concerned and not to the two parties themselves, for the validity of a second marriage necessarily must involve the validity of the dissolution of the first, which could not well be held still binding on the parties towards each other, but not binding towards anyone else. It may be said that the addition of this recommendation might encourage persons, who were not domiciled in England, to apply to the court, but we think the five years' interval would be sufficient check and that the danger is outweighed by the advantage of securing the position of persons, who have married divorced persons without being aware of any invalidity in the decree, and the position of their children.

Divorce Decree in Separation Cases.

391. In certain cases, the petitioner has good grounds for divorce, but chooses, sometimes from conscientious objections to divorce, sometimes from a desire to punish the respondent, to apply for separation, instead of divorce. Those who contend that a decree of separation is a greater punishment than a divorce decree in most cases are right. Moreover, we have already expressed an opinion that separation is an undesirable remedy. When parties are permanently separated, divorce is the more suitable remedy, and judicial separation might be abolished, but we have had it pointed out that it will have to be retained to meet the views of Roman Catholics and others. The late Sir George Lewis spoke strongly (1495–98) in favour of the view that the respondent should be entitled, when a decree of separation is asked for on grounds which would found a decree of divorce, to require the decree to be of the latter character. Lord Salvesen (6360–5), Lord Desart (15,858–9), Mr. Barnard (4422), and Mr. Priestley (4565) took an opposite view, leaving the option with the petitioner.

But if separation is an undesirable remedy, and leads to immorality, and is a heavier punishment than divorce, it seems unreasonable that the judge should have no power to make a divorce decree. If a party sues, where there is ground for divorce, the remedy claimed is not one which concerns that party alone, but also the parties, the children, the State and the interests of morality, and should not be left to the caprice of the one party.

392. We recommend that the court should have power, in its discretion, when a decree of separation is asked for on grounds found by the court which would justify a decree of divorce, to make a decree of divorce on the application of the respondent.

Damages.

393. A claim for damages may be made by a husband against a person who has committed adultery with the petitioner's wife. This is provided for by section 33 of the Act of 1857, which was passed in substitution for the old law as to actions of *crim. con.* By some, the principle of an action for damages for the loss of a wife is objected to, and foreigners cannot understand how the English law allows it. It seems to have been founded on notions of property. By others, it is justified as a means of punishment, though the damages are assessed on the basis of compensation for injury done, and not on punitive grounds.

The damages, when recovered, are placed in the power of the court, which can order part to go to the husband for extra costs and expenses, part to children, part even for maintaining the wife to prevent her being driven into immoral courses, and the remainder is usually given to the husband. The damages are awarded by a jury, and being regarded as compensation and not as punitive, an inquiry at the trial into the co-respondent's means is not admissible (unless, perhaps, the means have been used to procure the seduction of the wife). This course, however, is contrary to the sense of the jury, who invariably ask what are the means of the co-respondent, and have to be told that they are not relevant.

394. We think it would be a great advantage if another system were introduced, by which the co-respondent should be dealt with by the court, in the same way as a

guilty husband is dealt with at present. The latter can be compelled to provide for his wife, and to secure money for that purpose, and to provide for his children. On the other hand, at present the co-respondent cannot be compelled to do anything for the woman he has seduced, except by the award of some portion of the damages for her benefit: he may cast her off entirely.

395. We recommend that the court should have power to order the co-respondent to pay any actual pecuniary losses sustained by the petitioner, and to settle property, or make other financial provision or payments to or for the benefit of the parties, or either of them, or the children, as ordered, in lieu of payment of damages. If this power be given, there should be added power to require security. Provisions of a similar character should be made as against a woman found guilty with a respondent husband, with power to make her a party to the proceedings by service, and to override provisions against anticipation.

Punishment.

396. Some witnesses were in favour of punishing parties guilty of adultery, by which we understand making adultery a criminal offence (*see* as an instance 14,416). We do not think that the consideration of this suggestion falls within the terms of our Commission.

Jury.

397. A serious question is raised as to whether trials of divorce cases should be before a judge, or a judge and jury. Separation cases are heard before a judge, and he may order the trial thereof by jury, but in divorce cases any party has a right to a jury.

398. Section 28 of the Act of 1857 provides that "the parties or either of them" [*i.e.*, to a divorce case] "may insist on having the contested matters of fact tried "by a jury as hereinafter mentioned." By section 33 of the said Act, damages recovered against an adulterer are to be ascertained by the verdict of a jury, although the respondents or either of them may not appear. Section 36 is as follows:—"In "questions of fact arising in proceedings under this Act it shall be lawful for, but, "except as hereinbefore provided, not obligatory upon, the court to direct the truth "thereof to be determined before itself, or before any one or more of the judges of "the said court, by the verdict of a special or common jury." By section 40, "the "court may direct issues to try any fact before a judge of assize, or at the sittings "for the trial of causes in London, or Middlesex, either by a special or common jury." The powers conferred by this section are not used in fact.

399. Juries were not used in the ecclesiastical courts, nor are they in Scotland, nor in most other countries, in divorce cases. Trial by jury is less favoured and less used than it was in civil cases in the High Court, and in the county courts is not largely used. Divorce cases are tried more expeditiously, more economically, and more effectively before an experienced judge than before an inexperienced jury, whose sympathies are easily excited, who know little of any class of life except their own, and who may take extravagant views, say, of cruelty.

400. It is natural that advocates of note should lean to a jury, and it is not unreasonable to suppose that a jury is likely to be asked for when the party wishing for it has a bad case. If it be said that, to provide that all divorce and matrimonial cases should be heard by a judge alone, is to leave too much to the judge, it should be remembered that there would be an appeal both on law and fact. All the undefended cases are taken by the judge alone, except those in which damages have to be assessed, and these would be removed from juries, if the suggestion above as to damages be adopted.

401. The following table shows the mode in which suits for divorces were disposed of in the years 1908, 1909, and 1910:—

	1908.	1909.	1910.
Total number of cases heard - - -	716	722	627
Before a judge without a jury - -	643	641	567
„ special jury - - - -	18	17	13
„ common jury - - -	55	64	47
Defended - - - - - -	162	135	127
Undefended - - - - -	554	587	500

402. The comparative reduction in the cost and length of trial before a judge without a jury is a matter of extreme importance in any case, but more particularly in this class of case where the husband usually has to provide the costs of both himself and his wife. Further, if juries are retained, they will have to be provided for the local courts.

403. The witnesses, who referred to this subject, differ in opinion, but we think the weight of the evidence is in favour of trial by a judge alone.

Mr. W. English Harrison, K.C., the chairman of and representing the Bar Council, would leave parties entitled to a jury, (Vol. I., pp. 464, 468), but Mr. Winterbotham, President of the Law Society for 1910, expressing the views of his Council (11,754), was in favour of trial by judge alone, and the evidence of Mr. G. A. Solly, the Vice-President of the Liverpool Law Society (10,634), was that his committee took that view. Mr. Justice Bargrave Deane considered that in the Divorce Court greater justice was done by a judge than by a jury (1054) and Lord Mersey's views were to the same effect (1276). The Lord Chief Justice was himself in favour of trial by judge in these cases, but would leave the right to a jury as it is (15,734–9).

404. We recommend that trials in divorce and matrimonial causes should be before a judge alone.

405. If it should be determined not to follow this recommendation, we are clearly of opinion that the judge should in all cases have a discretionary power as to whether or not there should be a jury. This is the position in probate cases (except when the heir-at-law is entitled to a jury) which are often of great importance (*see* 20 & 21 Vict. c. 77. s. 35), and, moreover, this power would prevent abuse when the application for a jury is made for purposes of delay, or to place a husband in difficulties with regard to extra expense, or when, for any other reason, the judge did not consider that the application was reasonable.

Costs.

406.—(1) *Party and Party Costs.*—Taxation of costs is "as between party and party," as understood in the ecclesiastical rather than in common law courts, but it does not seem clear that such taxation gives the successful party what he is entitled to, namely, all the costs necessary for proceeding, and taxation should, in our opinion, give the latter result. If it does not, a husband, who usually has to provide for his wife's costs as well as his own, is liable to be sued at law for extra costs, which are necessary for the wife's proceedings.

407.—(2) *Wife's Costs.*—The fact that, in general, a woman is dependent upon her husband, and that he is liable for her necessaries leads to her being entitled, by the rules of the court, to have her costs of suit, whether petitioner or respondent, provided for by him. (*See* Rules 158 and 159.)

Even if women are placed upon an equality with men, as regards grounds of divorce, the inequality of means will remain, and the rule will have to remain.

But it may be liable to abuse, and should be carefully applied. Before its application, the court should be satisfied that the provision for the wife is necessary, because she has no separate estate or income, or other means of providing for her costs, and that she has reasonable grounds of suit or defence. Her application, unsupported as to these matters, should not be accepted, and satisfactory confirmatory proof should be required. We understand that this is the practice, but it would seem

desirable in framing new rules to provide specifically with regard to this matter, so that a wife should not have provision made by her husband for her costs unless it is clearly shown that she has not adequate means for proceeding or defending, as the case may be, and has reasonable grounds for suit or defence. If a wife is sued by her husband *in formâ pauperis*, she should not be provided for on a different footing, nor, if he has to defend as a pauper, should she, if suing, get more than a pauper footing: she might, if necessary, be put on the poor's roll as hereinafter proposed.

If a husband is too poor to provide for his wife's ordinary costs as well as his own, he might be permitted to provide her costs, as if she were proceeding *in formâ pauperis*, which she should be allowed to do. The hardship on poor men of having to provide two sets of costs is great, especially when the wife's case has no real foundation.

In any suit by a wife for divorce or judicial separation or restitution of conjugal rights, if the respondent offer to execute a deed of separation to the satisfaction of the court, and the offer be refused and the petitioner fail in the charges made, the court should, in dealing with the costs, be at liberty to deprive the petitioner of costs or order her to pay them.

These points should be dealt with by Rules.

408.—(3) *Fees and Costs generally.*—If local sittings are to take place, the subject of fees and costs will require to be considered, and opportunity should be taken to revise the present scales in the High Court. It has been pointed out to us that the scales are in various respects too high.

Proceedings in formâ pauperis.

409. By section 54 of the Act of 1857 the "Court may make such rules and "regulations as it may deem necessary and expedient for enabling persons to sue in "the said Court *in formâ pauperis.*"

The rules made under this power are Rules 25–27 and 208–11 of the Divorce Rules.

410. We have already (p. 45) stated the nature of the practice under these rules, shown how few cases have been brought under them, that only about 15 per annum have been heard, that the procedure does not meet the needs of the poor, and the objections to it. We may add that, for the 25 years, from 1883 to 1907, there were filed 15,505 petitions for dissolution, 2,626 petitions for judicial separation, and only 812 petitions for leave to sue or defend *in formâ pauperis* (Mr. R. T. Gates, 5174–7).

411. Even if the practice were amended by the assignment of counsel and solicitor and otherwise, so long as the prosecution and hearing of cases is confined to the High Court in London, the difficulties, which we have already mentioned, arising from the expense and inconvenience of conducting cases at a distance through agents who require to be paid (Mr. T. P. Griffithes, 3409–11), of taking parties, witnesses, and solicitors to London, and maintaining them there, and of breaking away from work or duties for that purpose, would not be removed.

412. If our recommendations as to local sittings of the High Court and procedure therein be adopted, the difficulties would be largely removed, and the cost and inconvenience of proceeding in the cases contemplated would be materially diminished, and many who are now debarred by cost and inconvenience from taking proceedings, would be enabled to assert their rights.

413. Even, however, with these facilities, there will remain a considerable number of persons, who will not be able to take advantage of them, unless some efficient and simple method of proceeding *in formâ pauperis* be adopted, and it is necessary to consider what that method should be.

414. In Germany, as we have already noticed (p. 27), a poor litigant not only has easy access to district courts, but is not compelled to pay court or lawyers' fees, and can obtain the free services of a lawyer on his or her behalf; and even the expenses

of witnesses are provided out of public moneys. Every lawyer, who has a practice in the court, is obliged to perform this duty (Dr. Neuhaus, Vol. III., p. 473–4). The costs and expenses of a successful poor party may be recovered from the defendant, if he has the means. The position is thus summarised in the evidence of Dr. Neuhaus (42,838): "That system is a complete one for enabling the poorest person to enforce "his claim for practically nothing, and, if he succeeds against a person who has "money, that person has to pay the expenses?—Quite so."

The provisions for "assistance judiciaire" in France, where every Tribunal d'arrondissement has jurisdiction, are given at length by Monsieur Mesnil (Vol. III., p. 480 *et seq.*). An avocat, an avoué, and a huissier are appointed to assist the poor party, and are bound to give their services.

For The Netherlands, where there are 23 local courts, the practice is stated by Dr. Bisschop (Vol. III., p. 507–8). A poor person, who is incapable of paying for legal proceedings and has *primâ facie* a good case, is able to proceed without legal fees or expenses, except the expenses of witnesses. Legal practitioners (the professions of advocate and solicitor are combined in The Netherlands) promise, on being called or admitted, to give their services gratuitously in any cases in which the President of the court asks for such services.

415. Lord Salvesen (Vol. I., p. 255 *et seq.*) explained the Poor's Roll system in Scotland, and Mr. J. B. Lorimer, who represents the Writers to the Signet Society on the Board of Reporters on *probabilis causa litigandi* of applicants for the benefit of the Poor's Roll, and acts as clerk and secretary to the Board, put in a memorandum prepared by him on the subject, which will be found in Vol. I., pp. 278–82.

The system, so Mr. Lorimer states (*ib.* p. 278), rests on an ancient Statute of the Scots Parliament, namely, an Act of 1424, c. 45, and its cardinal features appear to be as follows:—

A litigant who is desirous of obtaining the benefits of admission to the Poor's Roll, viz., of exemption from fees and charges and of having counsel and agent (solicitor) assigned to him or her, obtains assistance from one of the Poor's Agents, who are to be found in every considerable town in Scotland, in preparing and presenting his or her application. He or she has to obtain a certificate in statutory form as to means and other matters, the facts in which are certified by the minister and elders of his or her parish, stating either that the truth of the facts alleged is within their personal knowledge, or that it depends entirely on the statement of the applicant, and the litigant through his agent has to prepare the written precognitions or statements of the witnesses, and the documents, if any, necessary to show a *probabilis causa*.

A petition is then presented to the President of one of the Divisions (that is, the Courts of Appeal) of the Court of Session, who remits the whole process to a Board, called the Board of Reporters on *probabilis causa litigandi*, composed of two counsel, appointed by the Faculty of Advocates, one Writer to the Signet, and one Solicitor to the Supreme Courts, appointed by the Societies of Writers to the Signet and Solicitors to the Supreme Courts respectively, to report whether there is a *probabilis causa*, and sometimes also whether there is a sufficient degree of poverty.

The Reporters in due course, on the above or further materials, report whether there is or is not a *probabilis causa*, as to which their decision, unless the Court thinks there has been a gross miscarriage of justice, is final, and they also, if the matter be referred to them, report on the question of the applicant's poverty, their decision on this being open to review by the court on the facts ascertained by them. If the result be in the applicant's favour, the agent applies to the court for his client's admission to the Poor's Roll. The court grants this, unless cause is shown to the contrary by the other party, and appoints one, from six counsel nominated annually by the Faculty of Advocates (commonly called Poor's Counsel), and an agent, from four Writers to the Signet and four Solicitors to the Supreme Courts nominated annually by their respective societies to act as solicitors in the conduct of Poor's cases (commonly called Poor's Agents), to conduct the case, which thenceforward proceeds in the usual way.

The counsel and agents act gratuitously. The cost to the litigant is the actual out-of-pocket expenses of the agent, of citation by the messenger-at-arms, postages, and the travelling expenses and fees of witnesses who have to attend the hearing. In the event of the suit being successful, costs and expenses are recoverable from the unsuccessful party as in an ordinary suit.

Civil cases in the Court of Session are heard in Edinburgh, and the system aforesaid applies to all such cases. The sheriffs' courts, which have a considerable jurisdiction in ordinary civil cases, have no jurisdiction in divorce cases, though, under a recent Act, they may deal with separation and aliment cases.

In a small number of cases, difficulties arising from the cost and inconvenience of proceeding to Edinburgh exist, but they appear to be little felt in Scotland, where the bulk of the population is within easy reach of that city, compared with the corresponding difficulties in England and Wales, where large populations exist at considerable distances from London. (*See* the evidence of Lord Salvesen, Vol. I., p. 251-2.)

416. For proceedings *in formâ pauperis*, two conditions should be complied with: first, the applicant should have a proper *primâ facie* case; second, his or her means should be insufficient for the purpose of proceeding in the ordinary way.

We think that a system should be adopted for the proposed district courts which will secure that the formalities necessary, in order that these conditions may be complied with, shall be both simple and effective. The cases which will come before those courts do not need a system so elaborate as those systems which deal with all sorts of civil cases in which questions as to probable cause may involve some difficulties. Cases of the class with which we are dealing are as a rule simple, and, with rare exceptions, depend on pure questions of fact. The charges made are easy to state, and it can be seen at a glance whether an offence is alleged for which relief is obtainable, and whether an answer contains one or more of the few available defences. We think that the method, which we hereafter suggest, is sufficient for the purpose of ascertaining compliance with the first condition.

With regard to the second condition, we have already given (p. 45) the figures as to means at present required by the practice of the divorce court, viz., income not exceeding 30*s.* or 32*s.* per week, and assets not above 25*l.* and clothing. The limit of income thus stated is not a hard and fast limit, but leave is not usually given if it be exceeded. We think that a lesser income may possibly be the general limit in cases in the local courts, for we anticipate that our proposals will greatly lessen the cost of proceedings. The principle to be acted on is that the ascertained means are insufficient for proceeding in the ordinary way. The proper minimum and the best way to ascertain it will not be difficult to determine, when the system is tested. Rules will, no doubt, leave some discretion to the court, as they do now.

417. We do not propose to set out here the precise rules for obtaining leave to proceed, or defend, which will be matter for the authority which frames those rules, but outline the proposals, which we think should be carried into effect by rules.

1. The application should be made to and dealt with by the registrar of the court, with liberty to refer to the judge. It should not be necessary to serve notice of the application on the opposite party or parties, for we think that it would be sufficient, having regard to the fact that most of these cases will be undefended, to leave such party or parties to apply to de-pauperise the applicant.

2. It should be supported by lodging the claim, accompanied by the affidavits of truth already mentioned, and these should also (i) state the names and addresses of the witnesses, and exhibit their proofs; (ii) state the position, occupation, income, earnings, and means of the applicant (and if the applicant be a wife, those of her husband also) and the children, or others, if any, dependent on the parties; (iii) exhibit a certificate containing the particulars mentioned in the next sub-paragraph.

3. A certificate exhibited as aforesaid should be lodged. The certificate should be signed by some person of position, as, for instance, a magistrate or justice of the peace, or minister of religion in charge of a church in the district in which the applicant resides, or the clerk to the board of guardians or "officer of the court" as above defined (p. 75) for the said district, as to the position, circumstances, and means of the applicant, and length of residence, &c., and whether the applicant is of deserving character. (*See* the form used in Scotland, Vol. I., p. 279.)

4. The rules should proceed on similar principles as to cases of leave to defend. There is a difference where there is a mere denial, and where there are cross charges, though, even in the former class of case, the affidavits should swear to a *bonâ fide* defence.

5. On leave being granted, all court fees should be remitted, and manuscript or typewritten pleadings and other papers required to be filed should be permitted.

6. A counsel or a solicitor or both may, if necessary, be assigned by the court to assist the litigant if he so desires it, and the counsel or solicitor so assigned should not be at liberty to refuse his assistance, unless he satisfies the judge that he has some good reason for refusing. No fees should be payable by the pauper to the counsel or solicitor (compare the Rules of the Supreme Court, Order XVI., rules 25–28).

7. To facilitate the provisions as to assignment of counsel and solicitor, the registrar of each court should keep a list of those counsel and solicitors, who propose to practice in the court at which the case is to be heard, who would be willing to act in such cases, from which, so far as possible, a counsel and a solicitor for each case should be selected in rotation. The list of solicitors should be prepared annually by the local law society, if any, and approved by the Incorporated Law Society, or prepared by the latter Society, where there is no local society.

8. Mr. Lorimer in his evidence as to the Scottish Poor's Roll states (Vol. I., p. 281): "In practice many litigants on the Poor's Roll are quite willing to make "contributions towards the expenses of their action beyond the actual cash outlays." We think the same course should be permitted here. If the suit be successful, the ordinary costs and expenses, including costs of counsel and solicitor, which would be allowed on taxation in such cases, should be recoverable from the unsuccessful litigant, if possible.

It may be said that this last proposal is contrary to present professional etiquette, but it is adopted elsewhere as already stated, and as neither counsel nor solicitor appointed will have advised the initiation of the case in which they are appointed, we see no reason why the course we suggest should not be adopted by the professions.

We believe that the professions would be ready to assist in the scheme which we put forward.

418. The scheme should be made applicable to those cases in which the court is asked to continue an order made by a court of summary jurisdiction, or to grant further relief to a party remaining separated by the order of such court. The order should be *primâ facie* proof of probable cause, in respect of any charge founded on it, so as to minimise the formalities required to comply with the first condition aforesaid.

419. We do not propose to apply this scheme to divorce and other matrimonial cases in the Central High Court in London generally, because our proposals are directed to relieving that court of the cases of the poor, and enabling them to sue in the local courts. But there may be cases, in which a poor respondent or co-respondent or party cited in proceedings in the High Court may need this assistance, and the court should have power to allow it in accordance with rules, and to assign counsel and solicitor from lists kept for that purpose framed in a similar manner to that above suggested. Similar provisions will be required for appeals to the Divisional Court, either from the district commissioners or courts of summary jurisdiction, if the counsel and solicitor, who had appeared in the court below, are unable to appear on appeal.

420. We do not propose any system of proceeding *in formâ pauperis* before courts of summary jurisdiction, for we have not gathered that there is sufficient need for such a system in those courts.

Parties.

421. An adulterer must be made a co-respondent unless excused on special grounds, but when the charge is against a husband the court may, if it see fit, direct that the person, with whom the husband is charged, be made a respondent (*see* Act of 1857, s. 28). It seems that it is not strictly necessary to compel a wife to make an adulteress a party, and great injustice may be done if a woman is accused, and yet may never hear of the charge. A party (either wife or co-respondent), making a charge against a man, party to the suit, with a woman, should be required to serve notice of the proceedings with a copy of the writ and statement of claim, or, if the charges are in a defence, of the defence, on such woman, unless excused by the court from so doing on special grounds. Such a notice would give the opportunity to the party served to appear, and she should be entitled to do so, if served; and even if service has been excused, any woman, charged and hearing of the charge, should be

entitled to appear and defend the charge. The provisions of section 3 of the Matrimonial Causes Act, 1907, are not wide enough.

422. We recommend that the provisions as to service, notice, and right to appear should be the same in a suit for judicial separation, where a charge of adultery is made, as in a suit for divorce, in which a similar charge is made.

Rules, &c.

423. The President of the Probate, Divorce, and Admiralty Division has at present power to make rules of practice in divorce and matrimonial cases. We think that this power should rest with the Rule Committee, of which the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and the President himself, and others are members.

424. We suggest that two of the Commissioners taking the local work of the High Court, in accordance with our proposals, should be added to the Rule Committee.

425. The present rules of practice in the Divorce Division are, in our opinion, in need of many amendments, but we think it would be useless for us to consider these in detail in this report. When it is determined what changes, if any, are to be made both with regard to the administration of the law and the law itself, we think it will be necessary for whatever authority is constituted for the purpose of framing rules of practice to revise, consolidate, and amend the present rules of practice, and, if cases are to be heard in different districts by the High Court sitting locally, to frame the necessary rules of practice. Suggestions for improvement in details are given by some of the witnesses, as for instance by Mr. T. Smith Curtis, partner in a London firm, having a considerable agency practice (Vol. I., p. 170), Mr. Freke Palmer (14,855), Mr. Pierron (15,155), which the authority aforesaid would no doubt consider. We think, however, our suggestions cover the principal points.

426. It would simplify matters, if the ordinary High Court procedure by writ were adopted, as it has been in Admiralty and Probate cases, which formerly were governed by different rules of practice to those of the common law courts.

Citations and petitions might be abolished, as they have been in the Admiralty and Probate courts. A writ, with a statement of claim endorsed upon it containing a statement of the facts which form the groundwork of the claim, should suffice. The facts necessary in a divorce petition are usually short and simple, and there would be no difficulty in placing them on the back of a writ.

427. The writ should not issue, without an affidavit showing that the petitioner has a good case, as is the course adopted in Admiralty and Probate cases. At present, the affidavit in support of a petition in a matrimonial case is made by the party alone, who deposes that the paragraphs of the petition, which state facts within his or her knowledge, are true, and as to paragraphs which state facts not within the personal knowledge of the deponent, that those paragraphs are true, to the best of the deponent's information and belief. In the case of cross-charges, an affidavit in a similar way verifying the statement in the answer is required. This procedure is adopted in order to prevent wholly unfounded charges; but we do not think it is sufficient; both with regard to charges in a petition, and with regard to charges in an answer, the solicitor, if any, for the party making the charges should be required to depose that he has investigated the charges, and believes them to be well founded. If, at the time of the filing of the petition or answer, there should be no solicitor on the record for the party deponent, but a solicitor be afterwards employed, he should be required then to file the affidavit suggested.

428. In all cases, whatever charges a respondent has against a petitioner should be capable of being made by cross-claim and not require a cross-suit. After service of the proceedings, the papers served should be filed, but, in cases which are brought in the local district courts of the High Court, the service would ordinarily be effected by the officers of the court and would be retained by the court. If power be given to the party to serve, then filing after service, with an affidavit of service, would be necessary.

Particulars.

429. A prolific source of expense and delay in divorce cases is the practice of making some specific charges of adultery in the petition, and concluding with a general charge of adultery between the parties. The result is applications for particulars, and the introduction of fresh charges by way of further particulars. We consider that every charge in a petition should be specific, with date, place, time, &c., sufficient to give adequate notice of the charge, and that, if any further charge be made, it should only be introduced by leave of the judge, on an application to amend. We recommend that the rules should specifically deal with this. The same observations apply to charges made in an answer, and to any charges made in any case, whether for divorce or otherwise. The costs of an application to amend should be borne by the applicant, unless the judge should otherwise order.

Registration of Decrees.

430. A register of all decrees in divorce and matrimonial cases should be kept at the Principal Registry in London, to which the registrar of the court pronouncing the decree should send the necessary details.

431. It would be a public convenience and safeguard, if these decrees were required to be registered through the Registrar of Births, Deaths, and Marriages. The registrar of the court pronouncing the decree should send the required details of the decree to the aforesaid registrar.

432. The register of marriages, in giving the status of parties, if a party has been divorced, usually mentions the fact, but does not state whether the divorce was obtained by or against such party. It would be advisable that this should be stated.

Variation of Settlements, &c. &c.

433. The 45th section of the Act of 1857 provides that, in any case in which the court shall pronounce a sentence of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the court that the wife is entitled to any property either in possession or reversion, it shall be lawful for the court, if it shall think proper, to order such settlement as it shall think reasonable to be made of such property or any part thereof, for the benefit of the innocent party, and of the children of the marriage, or either or any of them.

By section 5 of the Matrimonial Causes Act of 1859, it is provided that the court, after a final decree of nullity of marriage or dissolution of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, either for the benefit of the children of the marriage or of their respective parents, as to the court shall seem fit; and by section 3 of the Matrimonial Causes Act of 1878 the court may exercise the powers vested in it by the provisions of the said section 5 of the Act of 1859, notwithstanding that there are no children of the marriage.

The following are the provisions of the Matrimonial Causes Act, 1907 :—

1.—(1) The court may, if it thinks fit, on any decree for dissolution or nullity of marriage, order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her life as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it may deem reasonable, and for that purpose may refer the matter to any one of the conveyancing counsel of the court to settle and approve of a proper deed or instrument to be executed by all necessary parties, and the court may, if it thinks fit, suspend the pronouncing of its decree until such deed shall have been duly executed.

(2) In any such case the court may, if it thinks fit, make an order on the husband for payment to the wife during their joint lives of such monthly or weekly sum for her maintenance and support as the court may think reasonable, and any such order may be made either in addition to or instead of an order under the last preceding subsection:

Provided that—

(*a*) If the husband afterwards from any cause becomes unable to make such payments it shall be lawful for the court to discharge or modify the order or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the order wholly or in part as the court may think fit; and

(*b*) Where the court has made any such order as is mentioned in this subsection and the court is satisfied that the means of the husband have increased, the court may, if it thinks fit, increase the amount payable under the order.

(3) Upon any petition for dissolution or nullity of marriage the court shall have the same power to make interim orders for payment of money, by way of alimony or otherwise, to the wife as it has in a suit instituted for judicial separation.

434. It will be seen that the present power to vary settlements, under the Matrimonial Causes Act, 1859, is confined to cases of divorce and nullity decrees, but it has been felt that the power should be extended to cases of judicial separation. In these cases there is the possibility of the parties being reconciled, so that orders affecting them may come to an end, but this would merely be one of the contingencies to provide against in the variation order.

435. Again, in cases of judicial separation, it will be seen that there is at present no power to order a husband to give security for payments ordered, although there is this power in cases of divorce and nullity decrees, and in suits for restitution of conjugal rights. This power should be extended to judicial separation cases.

436. With regard to children, the court has power, under section 35 of the Act of 1857, in cases of judicial separation, nullity, and divorce, to make interim and final orders with respect to the custody, maintenance, and education of the children of the marriage, and may direct proceedings to be taken to place such children under the protection of the Court of Chancery, and, by section 4 of the Act of 1859, the court may make such orders after the final decree.

437. It is to be noticed that, in these provisions, there is no power to make an order upon a husband for security for payment ordered to be made by him for the support and education of the children, whether in divorce, nullity, or separation cases. This power should be conferred.

438. There is no power to reduce or increase security given to a wife. This power should be given, both with regard to security given for her benefit and also with regard to security given, under our previous recommendation, for the benefit of the children.

439. At present there is no power to vary deeds of settlement, which have already been varied by order, that is to say, there is no power to vary an order of this character once made, however much circumstances may change. Power to make such variations as are required from time to time should be conferred; but, to prevent unreasonable applications, leave to apply should be necessary.

440. In general the powers of the court to vary settlements, to order payments, to secure moneys, and to order settlements of property need amplification. The court should be able to deal more fully in all cases with the property settled on or belonging to the parties, or either of them, and to order payments and security for moneys ordered to be paid, so that the position of the parties and their children, which is changed by virtue of the order of the court, should be dealt with also as regards property, income, and payments, with powers to vary the orders and documents, if necessary, at a later time.

441. It does not appear clear that the court, until an order has been made, has power to enjoin the party, against whom the order is made, from disposing of his or her property, and defeating the effective operation of the order when made (*see Waterhouse* v. *Waterhouse*, L.R. [1893], P. 284). The court should have power, after proceedings

have been commenced, to make *quia timet* orders in cases where it thinks fit to do so, and should have a general power to set aside voluntary dispositions of property, made without valuable consideration in order to defeat the exercise, in proceedings which have been or are about to be instituted, of the powers aforesaid or any of them.

442. Any powers which may be exercised against a woman (as, for instance, those under section 45 of the Act of 1857), should be exercisable against a man, and any powers, which may be exercised against a man, should also be exercisable against a woman, who may be in a position to comply with orders as to property and money, and any restraints on anticipations which affect her should be removable.

443. The above sections dealing with these matters may require alteration, if the grounds of divorce are altered.

Enforcement of Orders.

444. Any orders for payment of alimony, maintenance of wife or children, or other matters which, in the opinion of the court, can be more readily enforced by the procedure under the Summary Jurisdiction Act, should be so enforceable, on lodging with the clerk of the inferior court a copy of the order of the court, certified by the High Court Registrar, which, upon such lodgment, should become an order of the magistrate or justices, as the case may be.

Appeals.

445.—(1) Appeals from courts of summary jurisdiction should be to the Divisional Court of the Probate, Divorce, and Admiralty Division, as they are at present, in cases in which those courts have jurisdiction, and the decision of the Divisional Court should be final.

446.—(2) An appeal should lie from the High Court in local jurisdiction cases, or, in applications for new trials in such cases, to the said Divisional Court whose decision should be final, except on a question of law.

The grounds on which we make this recommendation are that, although appeals from the High Court are to the Court of Appeal, in these cases of the exercise of jurisdiction locally it seems to us desirable that the appeals should, in the first instance, be concentrated in the hands of the judges of the Divisional Court, who will thus be able to administer the law in line with their own decisions.

447.—(3) Appeals and applications for new trials in cases heard in the Central High Court in London, whether before judge or judge and jury (if juries be retained), should be to the Court of Appeal, as at present, except that a change should be made in applications for new trials from a judge alone, which at present are to the Divisional Court, consisting of himself and the other judge of the division. These applications should be made to the Court of Appeal. The provisions with regard to proceedings *in formâ pauperis*, hereinbefore indicated, should be applied to cases on appeal to the Divisional Court and Court of Appeal.

448. At present the times for appeal in final and interlocutory appeals and for applications for new trials from the court in London are not clearly defined; they should be placed on the same footing as those in other cases, as should appeals to the House of Lords, except that no appeal from a decree absolute should be permitted, unless the decree nisi is appealed against, as is the case under the present law.

Collusion.

449. It is contended (*see* 3481, 3743, and 6686) that at present collusion is treated too strictly. Collusion is thus described by Mr. Rayden, at page 83 of his work before mentioned (p. 117):—

> "Collusion is not, like condonation, a well-understood term; but it is held to exist where the initiation of a suit for dissolution of marriage is procured, or its conduct provided for by agreement or 'bargain' between the spouses, or their agents, particularly an agreement not to defend, even where the agreement is disclosed to the court, and where no one is able to indicate any fact which

is being falsely dealt with or withheld; because the court cannot allow itself to be hampered in ascertaining, for itself, whether there is danger of a husband, or wife, 'obtaining a divorce contrary to the justice of the case': collusion, although an absolute bar to dissolution of marriage, does not prevent a fresh suit (free from collusion) being afterwards brought."

450. It is alleged that there is no impropriety in parties agreeing as to the course to be taken in a suit, if such agreement is honestly and properly made in a suit in which there is previously an adequate and good ground for divorce. It is said that, at present, parties and their solicitors are kept so completely at arm's length, through fear of being considered as colluding, that unnecessary delay and costs are incurred.

451. We think that the mere fact of any such agreement should not be conclusive proof of collusion, and that the court ought to have liberty, when all the facts are placed before it, to act accordingly.

Voluntary Deeds or Agreements for Separation.

452. These were formerly held invalid, in the ecclesiastical courts, as contrary to public policy, but latterly they have been regarded as binding, and may be useful in some cases, as, for instance, where both parties for religious reasons object to dissolution of marriage; but serious difficulties may arise from holding parties to such agreements, which may be much affected by change in circumstances, and the position of the parties and their children. To enforce payments may require a suit, and consequent delay. Money, which may be adequate at one time, may be inadequate at another.

Children may require to be dealt with in a manner which is necessary for their interest, but was not provided for by, or is contrary to the terms of, the deed.

The deed is a bar to a judicial separation, or separation order on the ground of desertion, and it may be a bar to a suit for restitution of conjugal rights.

453. Amendment of the law is necessary, and we suggest that the best way in which the matter can be dealt with is as follows:—

1. Proceedings to enforce payment of monies, payable under a deed or agreement of separation, can be taken in the ordinary way. We do not think it necessary to recommend further special power as to enforcing payment, except that already suggested on p. 79 for the courts of summary jurisdiction, and except that either party to such a deed or agreement should be entitled to make it a rule of the High Court, whether it contains an agreement that this may be done or not.

2. Where there is default in payment for a month or more of an instalment due under a deed or agreement providing for payment of instalments larger in the aggregate than 2*l.* per week, a process similar to that for courts of summary jurisdiction, already suggested with regard to agreements for payment of 2*l.* or less weekly, should be permitted.

The applicant to whom the money is payable should be allowed to apply to the High Court in London, or, in cases where the means of the parties are within the limits above suggested, to the local High Court, to treat the deed or agreement as at an end, and find that the husband has been guilty of desertion from the date of default, and the court should be at liberty to order and find accordingly, and to make orders for maintenance, &c., on the ground of desertion, as suggested on p. 79, unless the court should think that reasonable excuse for the default has been shown; and the respondent should have liberty to answer the application by proof that he had reasonable cause for leaving the applicant, apart from the agreement of the parties, or by any other ground of defence which would be an answer to a suit on the ground of desertion. From the date of such order, the respondent should be deemed to have been guilty of desertion, for the purpose of any future proceedings in the High Court or elsewhere.

3. In order to meet new conditions, the High Court should have power, on the application of either party, if in the opinion of the court it was reasonable in the circumstances to do so, to set aside any deed or agreement for separation, on such terms as it may think fit, or to vary its terms and impose any new terms which it could impose on or after a decree of judicial separation, with power to vary these terms as it would after such a decree under powers given in accordance with our recommendations. To prevent unreasonable applications, the application should not be made as of right but only by leave of the court.

4. If a deed or agreement of separation be set aside or determined, or a decree or order for temporary separation should come to an end and no permanent order be made, or the parties are living apart without any deed or agreement or decree or order of separation, then, on application by either party *bonâ fide* willing to resume cohabitation to the other to resume cohabitation, if the party applied to refuse or fail to resume cohabitation, such party should be deemed to be guilty of desertion, commencing from the date of the demand, unless such party has reasonable cause for such refusal or failure.

A provision of this nature seems to be required to meet decisions to the effect that, to constitute desertion, there should be a pre-existing state of cohabitation.

Consolidation of Acts.

454. An amending Act will be necessary if our proposals be adopted, and we consider it would be advisable to consolidate the present Statutes and amendments in one Act. Amendments in mere matters of practice could be dealt with by Rules of Court.

The consolidated Act should include the Statute Law relating to matrimonial matters over which courts of summary jurisdiction have powers, amended as we recommend.

Chapter IV.

Marriage of Guilty Parties.

455. Whether the law remains substantially as it is, or whether further grounds for divorce are established, the question of whether or not a party to a marriage should be permitted, as at present, to marry a third person, with whom adultery has been committed by such party, requires consideration. On the one hand, such a re-marriage gives a guilty party an opportunity of rehabilitation to a certain extent; on the other, the question is whether, in the interests of general morality, such a marriage should be permitted. It is remarkable that both in England and in Scotland this subject has been regarded from different points of view, according to whether attention was primarily directed to general principles or to the position of two particular guilty individuals.

456. In England, during the period of divorce by private Acts of Parliament, it was required, and in Irish Bills of divorce it is still required, that the Bill should contain a clause prohibiting the marriage of the two guilty parties. This clause was formerly struck out in committee in the House of Commons, but latterly in committee in the House of Lords.

457. In Scotland, by a Statute passed in 1600, (Act 29, "anent the marriage of adulterous personis") the marriage of a person, with one with whom such person is found guilty of adultery, is forbidden.

The Statute is not in practice acted upon. The decree is drawn without mentioning the name of the third person, and thus there is no prohibition of the marriage of the guilty party with any third person, and therefore there is no prohibition of a marriage with the guilty third person.

458. The subject is deserving of full consideration, especially in view of the importance attached to it by the Churches. We, therefore, propose to give a summary of the discussions which have taken place in Parliament from time to time on the subject.

A.D. 1771.—A Bill was introduced on 26th February 1771 into the House of Lords by the Duke of Athol and passed (15th March) by that House, "to prevent any Bill "from being brought into Parliament for the Dissolution of any Marriage for the "Cause of adultery, unless a Clause or particular Words be inserted, to prevent the "Person against whom the Adultery has been proved, from marrying or contracting "Matrimony with the Person with whom he or she shall be proved to have carried "on such criminal Intercourse; and to declare the Issue of such Marriage incapable "of inheriting."

We have not found any account of the debate in the House of Lords, but the proceedings in the House of Commons are reported in "Parliamentary History," vol. 17, 185, 29th April 1771:—

"The arguments in favour of the Bill were, that this Bill would in some degree "check the frequent adulteries, as no lady could rely on the promises of a lover to "marry her in case of a divorce: that it would put a lady on her guard against a "false friend, who, under the cloak of friendship, might insinuate himself into the "family, and taking part in the quarrels of man and wife, take advantage of little "opportunities to prevail over the lady's virtue: that the facility with which divorces "were now obtained, made it to be feared, that forgiving people would on false "suggestions, and bare proofs, apply for them, when there was no other cause but "dislike in the parties, and that, in some measure, this would throw a damp on such "applications.

"Mr. Burke did in a very ingenious manner, urge several motives for passing "the Bill. Lords Beauchamp and Strange, and Mr. Fox, opposed the Bill. It was "urged that this would by no means stop the frequency of adulteries, as the prospect "of a future marriage was too distant a temptation to the commitment of it, the "present passions being evidently the cause: that it was levelled against the ladies, "and would leave those who were so unfortunate as to be seduced in the worst "situation possible, in so bad a one, that declaring she should not marry the person "she had sinned with, it must either follow, that she would cohabit with him, to the "scandal of society, or else must be debarred society, and be deemed improper to "marry at all, as none else would probably marry her: that the principle of the "Bill, if extended, would be of the utmost detriment to population, as few marriages "were contracted among the poor people but by the man to the girl he had debauched: "that the Bill was also ridiculous in itself, since it bound the legislature to a rule, "which every subsequent act of divorce might repeal, or confirm, as parliament "pleased, and which rule might be followed by the insertion of this clause, without "a formal act of parliament."

House divided. Yeas, 63. Noes, 56.

30th April.—Bill proposed to be committed, opposed on the same and further grounds.

Yeas, 60. Noes, 80. Bill lost.

A.D. 1779.—"Parliamentary History," vol. 20, 592.

11th March.—Adultery Bill introduced into House of Lords by the Bishop of Llandaff—containing clause prohibiting intermarriage of guilty parties.

30th March.—Bill read a second time.
Earl of Effingham and Earl of Carlisle opposed.

Bishop of Llandaff and Thurlow, L.C., supported, the latter saying he thought it a very proper clause, "for it appeared to him to be the only method of putting "a stop to those shameful intrigues we daily heard of, of paying addresses (called "honourable) to married women, and promising, nay, even entering into contracts to "marry them as soon as they can be divorced."
Bill ordered to be committed.

15th April.—House went into committee.

Earl of Effingham opposed, Bishop of Llandaff supported. Bill went through committee, was reported and passed the House of Lords 19th April.

19th April.—Bill brought into House of Commons.

4th May.—Mr. F. Montague moved second reading.

Lord Beauchamp opposed.

Mr. Fox "entered into a long discussion of the Bill. . . . . He took it "up on the doctrine of non-representation, which he said had been so many years "agitated in that House; he averred the ladies to be totally unrepresented, therefore "entitled to the most tender treatment, in cases where the sexes were to be distin-"guished. He then inveighed against the Bill in its present form, as unequal, "unjust, and tyrannical, tending to do more hurt than good, by preventing the fair "delinquents from making the only atonement to society in their power for past "errors, and driving them to become common prostitutes."
Sir George Yonge, Lord Ongley opposed.
Sir Adam Fergusson, Mr. Moysey supported.
Yeas, 40. Noes, 51. Ordered that Bill be read a second time that day four months.

A.D. 1800.—"Parliamentary History," vol. 35, 225–326.

2nd April 1800.—Lord Auckland introduced Bill to prohibit guilty parties from intermarrying.

The debates on this Bill in both houses fill about 100 columns or 50 pages of the "Parliamentary History."

4th April.—On order of day for second reading.

Duke of Clarence, Earl of Guilford, Lord Mulgrave opposed.

Bishop of London, Bishop of Durham, Lord Eldon, Earl of Carnarvon, Bishop of Rochester, Lord Grenville, and Lord Loughborough, L.C., supported.

For second reading: Contents, 30. Not contents, 11.

16th May.—Order of day for committing Bill.

Lord Auckland said he intended to abandon the Bill as defective and move a new Bill which differed by making persons guilty of adultery liable to be punished by fine and imprisonment, retaining, however, the clause prohibiting intermarriage of guilty parties.

Debate chiefly dealt with this last clause.

Earl of Moira, Duke of Clarence, Lord Mulgrave (in a long speech of nearly 20 columns) opposed.

Lord Eldon, Lord Auckland (in a long speech), Bishop of London, Lord Grenville supported.

Bill ordered to be printed.

23rd May.—Lord Auckland moved third reading.

Earl of Coventry, Earl of Westmorland, Earl of Carlisle, Duke of Bedford, Duke of Cumberland, Lord Mulgrave opposed.

Lord Eldon, Bishop of London, Bishop of Rochester (in a long speech), Lord Grenville supported.

Contents, 48; proxies, 29 = 77.

Not contents, 41; proxies, 28 = 69.

Bill read third time and passed. Protest entered on the Journals by Lord Ponsonby.

26th May.—Bill read first time in House of Commons.

On motion that it be read a second time.

Mr. Bouverie, Sir Gilbert Heathcote, Mr. Jolliffe opposed.

Mr. Pitt asked House not to throw out Bill on a bare first view.

On question being put that Bill be read a second time.

Yeas, 152. Noes, 38.

30th May.—Second reading moved by the Master of the Rolls (Sir R. Pepper Arden).

Sir George Douglas opposed.

Sir William Scott expressed doubts as to policy of Bill, but did not object to its going into committee.

Bill read a second time.

10th June.—Order of day for going into committee moved by Master of Rolls.

Sir Gilbert Heathcote, Mr. M. A. Taylor, Sir Francis Burdett Jones, Sir Ralph Milbank, Mr. Bastard, Sir G. P. Turner, Mr. R. B. Sheridan opposed.

Mr. Erskine, Mr. Windham, Sir W. Scott, the Attorney-General (Sir John Mitford, afterwards Lord Redesdale), the Master of the Rolls, Mr. Wilberforce supported.

Question being put that Mr. Speaker do now leave the chair, House divided. Yeas, 104; Noes, 143; so it passed in the negative. Bill lost.

In the following year, on March 19th, 1801, the Marquess of Buckingham attempted in the House of Lords to introduce a proviso in Taylor's Divorce Bill, prohibiting the marriage of the guilty parties (*see* "Parliamentary History," vol. 35, 1248–64), and a debate ensued in which Lord Auckland, Marquess of Buckingham, Lord Grenville, the Bishop of Rochester, Lord Loughborough, L.C., the Bishop of Durham, Bishop of London spoke in favour of the proviso.

Lord Hay, Duke of Clarence, Earl of Radnor (on ground that House of Commons had expressed its opinion against such a clause), Lord Mulgrave, Earl of Clare opposed.

Contents, 27. Not contents, 24. Majority for the prohibitory clause, 3.

27th March.—Bill as amended reported to House.

Marquess of Buckingham, Marquess of Sligo, the Bishop of Rochester, Lord Grenville, Lord Auckland, Lord Loughborough, L.C., supported.

Duke of Clarence, Earl of Suffolk, Earl of Westmorland, Earl of Carlisle, Lord Mulgrave, Earl of Clare, Duke of Bedford opposed.

Contents, 29. Not contents, 56. Clause rejected.

The result is that on three occasions, in 1771, 1779, and 1800, the House of Lords passed and the House of Commons rejected Bills prohibiting the intermarriage of guilty parties, and in 1801 the proviso in Taylor's Bill was rejected in the House of Lords.

Lord Auckland, having failed to get the House of Commons to accept the principle of prohibiting the intermarriage of guilty parties, moved on May the 2nd, 1809, the present Standing Order on the subject.

See "Parliamentary Debates (Hansard)," vol. 14, 326–335.

Lord Mulgrave, Earl Stanhope, Lord Darnley opposed.

Archbishop of Canterbury, Lord Erskine, Lord Eldon, L.C., Lord Grenville, Earl of Liverpool supported.

For Lord Auckland's motion, 28; against, 12. Majority for, 16. Protests were entered on the Journals by Lords Ponsonby and Berkeley.

18th May 1809 (*see* "Hansard," vol. 14, 612).—A discussion took place in the House of Commons on this Standing Order of the House of Lords, some members (including Sir S. Romilly) expressing their objections to it.

In 1856.—Divorce and Matrimonial Causes Bill of 1856. "Hansard," vol. 143, 251 (3rd series).

In House of Lords, Bishop of Oxford moved clause prohibiting marriage of guilty parties as an amendment—agreed to ("Hansard," vol. 143, 251).

In House of Commons the Bill was read a first time on July 4th, but on July 11th Lord Palmerston (on a motion for deferring the second reading which was carried and involved the withdrawal of the Bill for that session) denounced the clause prohibiting marriage of guilty parties ("Hansard," vol. 143, 710).

Bill of 1857.—In the House of Lords, Lord Wensleydale ("Hansard," vol. 145, 1418–20) moved to amend clause 45 by adding a proviso that "the other party shall "not marry the person with whom the adultery is proved to have been committed, "and the Court in its decree for a divorce is to name that person." This was opposed by the Marquess of Lansdowne, because to deprive a woman of the opportunity of marrying her partner in sin "would be to degrade her utterly, and to drive her to a "course of prostitution."

The Bishop of Oxford said they ought to consider the effect which might be produced by their legislation upon the lowest order of society. "Unless they agreed "to this proviso, they offered great inducements to crime, with the view of dissolving "the marriage tie."

Lord Campbell supported the amendment.

Contents, 28. Not contents, 37; majority, 9.

Therefore proviso lost and clause was left as it is now in the Act.

In the House of Commons, Mr. Rolt ("Hansard," vol. 147, 1760–66) moved to prevent guilty parties marrying each other, but this he did not press to a division, because a motion by him on behalf of another member to prevent guilty parties from marrying at all was negatived by 110 to 50—majority against, 60.

459. It may be gathered that the particular question became somewhat involved, in the debates of 1857, with the general question of permitting any re-marriage of a guilty person.

460. It is said, on one side, that the present law, which permits of the marriage of two guilty persons, affords a direct means of temptation to depart from the path of virtue, because the ultimate consequences are not so serious as they might be made, and because guilty persons may, to a certain extent and in the eyes of some, be treated as "whitewashed" by a re-marriage; and it is said that this means of temptation has an active and baneful operation. The evidence of Mr. Justice Bargrave Deane is as follows:—

> "1022. It has been suggested, Mr. Justice Deane, in some questions that the knowledge that she may be divorced, and then may marry her paramour, will tend to her fall. Have you ever seen any indication of that in any of the cases

that have come before you, including the letters, hundreds of which you must have read?—Numbers of cases."

"1023. You have seen that?—Yes, where the woman who is married to a poorish man meets a man of means, and is attracted by him, and then comes the balance between right and remaining a pure woman with a man perhaps she is not very fond of, or going over the line and being able to marry a rich man whom perhaps she does not care for. There are numberless cases of that."

"1024. Is that the conclusion you have drawn from evidence?—Yes."

"1025. Including letters?—Letters and *viva voce* evidence, and things she has been heard to say."

We refer also to the views expressed by Lord Mersey (Sir John Bigham) (632–5, 1291–2); Canon Hensley Henson (22,876); Dr. Inge (38,678; G.); Sir Edward Carson (41,663–7); Sir Edward Clarke (42,132–4).

461. On the other hand, some important witnesses are against the suggested change, for instance, we may especially refer to the expressions of opinion by Lord Salvesen (6417–21) and the late Sir George Lewis (1624–6).

462. The question then seems to be, what is the true point of view having regard to the best interests of the community as a whole. The prohibition would probably be a strong deterrent to yielding to temptation placed before women of any social position or even in any well-to-do circumstances, but it seems doubtful whether it would have any real effect as a deterrent on those of poorer degree, and it might thus result in the end, in the large majority of cases, in continued immorality, which could not be cured by re-marriage.

463. If such a restriction were to be imposed, it would have to be expressed that such a marriage should be prohibited and not recognised as valid in England, wherever celebrated, which again, in the present state of foreign laws, would give rise to trouble. Further, it would be necessary, if other grounds than adultery are allowed, and a divorce took place on such other ground or grounds, to provide that the marriage of the divorced person with any person with whom adultery has in fact been committed during the dissolved marriage should not be permitted. Unless a provision of this nature be introduced, the law could be evaded, in cases of adultery, by proof of another ground, which would be the ground of divorce selected, or even created, to avoid the operation of the law.

Again, if a married man seduces a woman who believes him to be single, it would be said that it could not be right to prevent them marrying, if he were divorced.

464. After considering what has already taken place in Parliament, and the various arguments for and against permitting a party to a marriage as at present to marry the person with whom adultery has been committed by such party during the marriage, we have come to the conclusion not to advise a change in the law.

Names of Women after Divorce.

465. The question of the right of a divorced wife, innocent or guilty, to retain her married name after divorce was mentioned incidentally in the course of the evidence; and it has also been brought to our notice by letters sent to the Secretary of the Commission. We do not propose to express any opinion about it, as we do not consider it falls within the scope of our Commission. But we have thought it might be useful to embody a statement on the subject in the Volume of Appendices. We refer to the memorandum prepared by the Assistant Secretary (App. XXVIII., p. 191).

Jewish Divorces in this Country.

466. A matter of importance to the Jewish community in this country has been drawn to our attention by the late Dr. Hermann Adler, Chief Rabbi in England; Mr. D. L. Alexander, K.C., President of the London Committee of Deputies of the British Jews; and Mr. H. S. Q. Henriques, B.C.L., representative of the West London Congregation of British Jews and Vice-President of the said Committee. They point out the desirability of legislation with regard thereto.

467. The subject is fully dealt with in the evidence (Vol. III., pp. 408, 412, 417). Mr. Alexander and Mr. Henriques give accounts of the position of the Jews in this country with regard to divorce before and after the Act of 1857. The following passage from the evidence of the former is sufficient to show the legal position:—

"41,482. Before the Act of 1857 what was the position the Jews occupied?—Before the Act of 1857 the 'Get' was given by the Jewish Rabbis, and they continued to do so until 1866. The history of this is very clear. Your Lordship will probably remember that in 1854 there was a Bill in Parliament which proposed to transfer the jurisdiction, or to give jurisdiction, to the Court of Chancery. When that Bill was before Parliament it was submitted to some legal gentlemen on behalf of the board of which I am now president, and they said that that Bill did not interfere in any way with the power of rabbis to grant divorce according to Jewish law. When the Act of 1857 was passed the opinion of three eminent gentlemen of the Bar was taken as to whether that Act made any difference. The unanimous opinion of those gentlemen, which I have here, was that it made no difference and no doubt, from 1857 until the year 1866, the Ecclesiastical Court—the Beth Din—did grant divorces under the impression, I believe, which was founded on the opinions which had been obtained—legal opinions—that the Act made no difference whatever. But in 1866 the then Registrar-General, Mr. Graham, refused to recognise that practice; and I think you may take it that from 1866 the Jewish ecclesiastical authorities in this country have always refused to grant any Jewish divorce unless it is preceded by a decree of this country, or, if the domicile is foreign, unless proof that according to the foreign laws that the marriage has been legally dissolved is furnished."

"41,483. You say the Act of 1857 established for the first time that the court could grant divorce. Transferring the Ecclesiastical Court power could not have done that?—That is so."

"41,484. What was the actual position with regard to a Jewish divorce before 1857. Did the law take cognizance of it?—My own view is—and Mr. Henriques' evidence will go to this (in which I entirely concur)—that a Jewish divorce was invalid before; that you could only get divorce by Parliament, of course."

"41,485. Still, you say the Ecclesiastical Jewish authorities acted——?—But I do not think if a case had ever come to be contested in a court of law in this country the English courts would have acknowledged the validity of such a divorce."

"41,486. Well, since 1866 it has always been required by the Jewish authorities, before they would act, that the law had acted; and your point which you wish to have notice taken of is, that it should be made quite clear that these illegal divorces should be stopped?—Yes, I want to stop them."

"41,487. Whatever the law of England is, that that should precede any religious interference?—Yes. Of course, we do not want to have the religious divorce entirely stopped. It may follow the civil divorce, but it must not precede the civil divorce."

468. What is complained of was the subject of a statement prepared and forwarded to the Registrar-General in February 1909, a copy of which is set out in Vol. III. (pp. 413–4).

469. The evidence and statement show the precautions taken by the Chief Rabbi in connection with the celebration of Jewish marriages. But certain abuses are stated to occur, with regard to which we take the following passage from the statement aforesaid:—

"But we regret to say that there are some foreign rabbis who have settled in this country who presume to dissolve a marriage between persons residing here by granting to them 'Gittin' according to the mode prescribed in Deuteronomy xxiv. 1–4, the husband under their direction handing a 'bill of divorcement' to his wife without the marriage having been previously dissolved by the Divorce Court of this country."

The cases in which this is done are then given (*see ib.*, p. 413), and the unfortunate consequences of such action are pointed out. It is stated that "these rabbis have been "warned that they are directly assisting at these undeniable results, but without

" avail," and the suggestion made in the statement and supported by the evidence is " to impose a penalty on all persons assisting at or taking any part in the pronouncing " of a Jewish divorce, except after, and on production of, a decree absolute of the " Divorce Court in England, or proof of a previous legal divorce elsewhere."

"The penalty for the offence to be effectual should be severe, so as to prevent it " being considered merely as an additional fee imposed by law on the ceremony."

470. In our view this matter falls within the scope of the terms of our Commission, and we consider that the suggestion aforesaid should be adopted.

PART XVII.

QUESTION VIII.—SHOULD ANY, AND, IF ANY, WHAT PROVISIONS BE MADE FOR PREVENTING OR LIMITING THE PUBLICATION OF REPORTS OF DIVORCE AND OTHER MATRIMONIAL CASES?

The Present Position.

471. This is an extremely important question, and its importance has been felt ever since the establishment of the Divorce Court. Prior to the establishment of that court, cases for divorce by proceedings in Parliament were not sufficiently frequent to give rise to any material objection to the reporting of them such as exists at the present day.

472. In cases in the Ecclesiastical Courts, the evidence was taken in private before an examiner, and the notes of the evidence were placed before the judge at the hearing. Proceedings so conducted are usually too uninteresting to attract public attention, though the same cannot be said of the occasional actions of crim. con. which were brought in the Common Law Courts. We may refer here to the evidence of the late Dr. Tristram (42,245 *et seq.*).

Moreover, before 1857 reports of cases heard in the courts did not so readily reach the masses of the people, because the dissemination of news in the Press before 1857 was insignificant as compared with that which has developed in the last 50 years, and more especially since the Education Act of 1870.

473. At the present day, one court for Probate and Divorce cases sits in London daily during the sittings, and is mainly occupied with divorce and matrimonial cases; the other judge of the Division sometimes also takes part in the disposal of these cases. The witnesses have to be examined orally in open court (*see* section 46 of the Act of 1857) except in certain cases, such for instance as cases of nullity on the ground of impotence (which are heard *in camerâ* in the present court, as they were in the former Ecclesiastical Courts), or where witnesses are out of the jurisdiction, or, from illness or other circumstances, cannot attend in court.

474. The result is that these cases are heard in public, most of them, practically all of them, based on sexual immorality. For the cases of nullity of marriage, of judicial separation for cruelty and desertion, and of restitution of conjugal rights are few. A mass of details, more suggestive than actually indecent, is thus daily placed before the public, notwithstanding the extreme propriety with which counsel, familiar with the work of the court, conduct their cases.

475. The extent to which divorce and matrimonial cases in the Divorce Court are reported may be gathered from the following returns, which have been compiled from copies of the newspapers kept at the British Museum by a research worker recommended by the Superintendent of the Reading Room of the British Museum and appointed by the Secretary with the sanction of the Treasury. In these returns, the figures represent the number of columns respectively occupied by reports of the aforesaid cases, in the newspapers mentioned, for the respective periods against which the figures are placed. The papers differ in size, so that the size of columns differs in the different papers, and some of the papers give a greater number of columns to general law reports than do others.

LONDON MORNING PAPERS.

—	"Times."	"Daily Telegraph."	"Standard."	"Morning Post."	"Daily Mail."	"Daily Chronicle."	"Daily News."
1909.							
Hilary Sittings.	32½	76¾	51½	27¼	56	34	25¾
Easter Sittings.	10¾	9¼	8¾	¾	14	5¼	2½
Trinity Sittings.	9¼	16¾	12¼	3	19¾	11¾	6¼
Michaelmas Sittings.	30¼	23½	15½	4¾	25¼	10¾	9¾
Total for 1909.	82¾	126¼	88	35¾	115	61¾	44¼

—	"Times."	"Daily Telegraph."	"Standard."	"Morning Post."	"Daily Mail."	"Daily Chronicle."	"Daily News."
1910.							
Hilary Sittings.	10¾	16¾	11¼	1	16¼	7½	4¾
Easter Sittings.	11½	22	15¼	3	21¼	8¾	4¾
Total for period in 1910.	22¼	38¾	26½	4	37½	16¼	9½
Total for period	105	165	114½	39¾	152½	78	53¾

LONDON EVENING PAPERS.

—	"Pall Mall."	"Westminster Gazette."	"Evening Standard."	"Globe."	"Star."	"Evening News."
1909.						
Hilary Sittings.	17	30¾	77¾	50	36¼	50
Easter Sittings.	2¼	6¼	9½	6½	7	4¾
Trinity Sittings.	1¼	3¾	16½	10¼	12¾	8¾
Michaelmas Sittings.	5½	7	29	14½	11¾	11
Total for 1909.	26	47¾	132¾	81¼	67¾	74½
1910.						
Hilary Sittings.	3¼	2½	16½	7¼	7¼	3¾
Easter Sittings.	1¼	11	22½	16¾	12½	9
Total for period in 1910.	4½	13½	39	24	19¾	12¾
Total for period.	30½	61¼	171¾	105¼	87½	87¼

PROVINCIAL PAPERS.

—	"Yorkshire Post."	"Bradford Daily Telegraph."	"Manchester Guardian."	"Liverpool Daily Post."	"Western Morning News."	"Notts. Daily Guardian."
1909.						
Hilary Sittings.	26½	34½	26	34½	12¾	23¼
Easter Sittings.	3	3½	1	1	1¼	3¼
Trinity Sittings.	7	9	2¼	5½	¼	3¾
Michaelmas Sittings.	8	12¼	1½	7¾	4¼	12¼
Total for 1909.	44½	59¼	30¾	48¾	18½	42½
1910.						
Hilary Sittings.	7¾	13¾	1	1¾	¼	3½
Easter Sittings.	8	8	1¼	5¼	2½	11½
Total for period in 1910.	15¾	21¾	2¼	7	2¾	15
Total for period.	60¼	81	33	55¾	21¼	57½

SUNDAY PAPERS.

—	"Dispatch."	"Umpire."	"Sunday Chronicle."	"News of the World."	"Lloyd's."	"People."
1909.						
Hilary Sittings.	37½	81¼	14¾	54¼	38¼	51¼
Easter Sittings.	8½	41¼	2¼	16½	7¾	19¼
Trinity Sittings.	8	60¼	6	21¼	12¼	30
Michaelmas Sittings.	7½	55½	3½	26¾	18¼	27½
Total for 1909.	61½	238¼	26½	118¾	76½	128

—	"Dispatch."	"Umpire."	"Sunday Chronicle."	"News of the World."	"Lloyd's."	"People."
1910.						
Hilary Sittings.	10¼	38¾	1	32¾	16½	39
Easter Sittings.	13	34	6¼	21¾	9¼	21
Total for period in 1910.	23¼	72¾	7¼	54½	25¾	60
Total for period.	84¾	311	33¾	174¼	102¼	188

476. If our recommendations, that divorce and matrimonial cases shall be heard at courts sitting not only in London but in different parts of the country, be adopted, the opportunities of obtaining reports for publication will be largely increased; and it may be expected that they will be extensively used by the local Press, if publication continue to be permitted on the present footing. If, as may not unreasonably be anticipated, the establishment of local courts enables a larger number of persons to proceed to enforce their rights than those who can do so at present, the number of cases will increase, and so also will increase the opportunities afforded for reports of such cases.

477. Shortly after divorce cases began to be published, a protest was uttered by Her late Majesty Queen Victoria, who wrote on 26th December, 1859 to the Lord Chancellor, Lord Campbell, as follows:—

"The Queen wishes to ask the Lord Chancellor whether no steps can be taken to prevent the present publicity of the proceedings before the new Divorce

Court. These cases, which must necessarily increase when the new law becomes more and more known, fill now almost daily a large portion of the newspapers, and are of so scandalous a character that it makes it almost impossible for a paper to be trusted in the hands of a young lady or boy. None of the worst French novels from which careful parents would try to protect their children can be as bad as what is daily brought and laid upon the breakfast-table of every educated family in England, and its effect must be most pernicious to the public morals of the country."

To this, according to the note in "The Letters of Queen Victoria [1837–61]":—

"Lord Campbell replied that having attempted in the last session to introduce a measure to give effect to the Queen's wish, and having been defeated, he was helpless to prevent the evil."

478. It may be convenient to state what legislative steps have been taken, or attempted to be taken, with regard to this question of publication.

It will be found, on reference to the debates on the Act of 1857, that an effort was made to introduce into clause 50 (which gave power to make rules and orders for procedure) power to make rules "including any rules and regulations for enabling the "said Court to hear any proceedings under this Act in private," but that after debate the amendment was rejected by 131 votes to 23 (Hansard, vol. 147, 1758–9).

On July 28th, 1859, when one of the Acts amending the Act of 1857 was under discussion, an effort was again made by the Lord Chancellor to give the court power to sit with closed doors, and the result of the discussion in the House of Lords was that power to sit with closed doors at the discretion of the judge was conferred by clause 4, which was carried by 26 votes to 9 (Hansard, vol. 155, 51–150).

This clause became clause 5 of the Bill, which passed to the House of Commons, where it was discussed at length on August 11th, 1859, and was struck out of the Bill, without a division (Hansard, vol. 155, 1368–75).

We refer to these debates, and in particular to the speech made by the then Attorney-General, Sir Richard Bethell, in the course of which he said that "the court "was a place of resort—according to the accounts that were given to him—of "characters of the worst description. Crowds congregated there for the purpose of "hearing details which could only give gratification to depraved and diseased minds" (Hansard, vol. 155, 1370). He also pointed out the effects of publicity in embarrassing witnesses and deterring parties from applying to the court, and the lifelong injury which might be inflicted not only on the parties to the suit, but also their innocent and unhappy children. "He thought, therefore, the interests of humanity, the interests "of justice, the interests of public decency, all required that in a tribunal of this "kind there should be an exception to the general rule, such as that embodied in "this clause" (*ib.* 1371).

On the 22nd April, 1887, there was a debate in the House of Commons on a notice on the paper by Mr. Samuel Smith (Flintshire) in the following terms:—

"That this House deplores the evil done to public morals by the publication in the newspapers of the offensive details of divorce cases, and of others of an indecent character, and urges upon the Government the need of strengthening the law against the publication of obscene matter." (Hansard, vol. 323. 3rd series, 1660.)

The present Lord Chief Justice of England, who was then Attorney-General, speaking on behalf of the Government, said that the motives of the mover met with the sympathy of the Government, and that "they agreed that some alteration, if "possible, should be made either in the law or in its practice, so as to put a stop "to what was undoubtedly a monstrous abuse." Several speakers, including Sir Robert Finlay (then Mr. Finlay), supported the views of Mr. Smith. A motion pursuant to the notice was not formally moved.

On May 14th, 1887, a Bill (1887, No. 264) to amend the law as to reports of proceedings in courts of law was introduced by Sir Robert Finlay into the House of Commons. The Bill was backed by Sir Robert Finlay, Mr. Egerton Hubbard, Sir Frank Lockwood (then Mr. Lockwood), Mr. Samuel Smith, Mr. Bryce (the present Ambassador to the United States), Sir Robert Reid (Lord Loreburn), and Mr. Asquith, the present Prime Minister (Hansard, vol. 314, 1942–4, and Commons Journal). The object of that Bill is stated in its first clause as follows:—

"In any proceedings, civil or criminal, in any Superior Court, it shall be lawful for the Court at any time by order to direct that the details of matters

of an obscene or indecent nature in such proceedings, or in any specified part or parts thereof, shall not be published in any newspaper, book, pamphlet, newssheet, placard, advertisement, or other printed document."

The Bill was ordered to be read a second time on 15th June, and was finally ordered to be read on August 22nd, but was not further proceeded with. Identical Bills were introduced in 1888 (No. 188) and 1889 (No. 139). The Bill of 1888 was backed by the same members, with the exception of Sir Robert Finlay, and was introduced by Mr. Lockwood on March 22nd. It was ordered to be read a second time on 17th April, and was finally ordered to be read on 2nd July, but made no further progress. The Bill of 1889 was introduced on February 28th by Mr. Lockwood, and ordered to be read a second time on 11th March. On 27th May it was ordered to be read on the 18th June, but it also does not appear to have made further progress. This last Bill was backed by Mr. Lockwood, Mr. Samuel Smith, and Mr. Hubbard. (*See* Commons Journal.)

On February 28th, 1896, a Bill containing three clauses [No. 17] was introduced into the House of Lords, intituled "An Act to authorise a Court to prohibit the "Publication of Indecent Evidence." It was introduced by the Lord Chancellor, the Earl of Halsbury, and was read a second time on the 20th March of that year. (Hansard, vol. 38, 4th series, 1434.)

The first clause of that Bill is as follows:—

"Where a judge of the High Court is of opinion that any evidence given at any trial before that judge is of such an indecent character that the publication thereof is likely to be prejudicial to public morality, the judge may order that such of the evidence as is specified in the order shall not be published, and any person who publishes or is a party to the publishing of such evidence in any newspaper, periodical, book, or any other public manner, in contravention of such order, shall be guilty of contempt of court and punishable accordingly."

The second clause applied the Act to Scotland, and the third gave a short title to the Act. Although it was read a second time on a division of 48 to 21 and was committed to a Committee of the whole House, it does not appear that it was further proceeded with. It was supported by the late Lord James of Hereford, the late Lord Selborne, the late Lord Norton, Lord Lansdowne, the Bishops of London and Manchester, and the late Lord Salisbury. It was opposed by the late Lord Coleridge, the late Lord Russell of Killowen and Lord Rosebery, and the late Lord Herschell.

479. In Scotland, the Court acts on the view that it is entitled to hear *in camerâ* any case, civil or criminal, which in its opinion it would be detrimental to public morals to hear in public, or in which a public hearing would be prejudicial to justice. All criminal cases involving sexual crimes are heard *in camerâ*, and the power to hear civil cases *in camerâ* is freely exercised. In all cases the judgment or verdict must be given in public.

Foreign Laws.

480. Before proceeding to consider the views presented to us and the evidence which has been given before us on the subject, we think it desirable briefly to refer to the provisions in the laws of foreign countries and the colonies with regard thereto. There will be found in Appendix XVI., pp. 128–36, copies of the returns supplied to the Commission by the Secretary of State for Foreign Affairs, in response to the inquiry, made by the Secretary of the Commission on behalf of the Commissioners, if he would be good enough to cause inquiries to be made in foreign countries as to "whether "there are any, and if so, what laws, regulations, or rules dealing with the publica- "tion in the public press of reports of proceedings in divorce and matrimonial causes."

481. We set out a short summary of the information furnished.

In *Austria*, all divorce and matrimonial proceedings are heard in public, but the Court has power to hear such cases *in camerâ*, in the interests of morality, public order, or justice, or on the application of a party, if private family affairs have to be proved, though in every case the verdict must be given in public.

Publication of proceedings heard *in camerâ* is prohibited under section 309 of the Austrian Penal Code; otherwise there is no restriction on publication.

In *Belgium*, there are no special rules and regulations on the subject, but the witnesses in divorce cases are heard *in camerâ*.

In *Denmark*, there are no special rules or regulations, but the Supreme Court has power to hear *in camerâ* in its discretion.

In *France*, on the other hand, the matter is dealt with specifically. By Article 239 of the Civil Code, publication in the press of proceedings in actions for divorce is prohibited under penalty of a fine of from 100 fr. to 2,000 fr., as provided by Article 39 of the Law of July 30, 1881. Publication of judgments is permitted.

In *Germany*, the Court has power, which is usually made use of in matrimonial cases, to hear *in camerâ* if, in its opinion, harm may be done to public morality, or to the Commonwealth (Dr. Neuhaus, 42,839), and by section 184 (*b*) of the Criminal Code, publication of proceedings heard *in camerâ* is prohibited.

In *Greece*, there are no special laws, rules, or regulations, but it is stated that Article 21 of the Press Law of the 6th September, 1833, which prohibits the publication of anything hurtful to religion or public morals, would render possible the suppression of such reports, if any appeared.

In *Italy*, where the Courts have no power to grant a divorce *a vinculo* but only *a mensâ et thoro*, in contentious proceedings the Court has power to try *in camerâ* all cases where publicity may be dangerous to public order or morals by reason of the nature of the case, and publication of any proceedings heard *in camerâ* is prohibited.

In *The Netherlands*, divorce and matrimonial causes are heard *in camerâ*, so that it is impossible to publish reports of proceedings in the press.

In *Norway*, no special regulations seem formerly to have existed with regard to divorces which were, as a rule, granted by Royal Licence. By the 11th paragraph of the Law of August, 1909, however, divorce and matrimonial causes are heard *in camerâ*, and the Court has power under paragraph 131 of a Bill regarding the courts of justice, which was before the Storthing in 1910, to prohibit publication, if it thinks fit.

In *Portugal*, recent changes have effected great alterations in its law, and we are not able to say from the material before us what is the exact position with regard to the matter, but we understand that in divorce cases the Court has discretionary powers according to the nature of the cases, and that in nullity cases the publication of any part of the proceedings, other than the decision of the Court, is prohibited.

In *Russia*, all proceedings in divorce and matrimonial causes are conducted before the Ecclesiastical Consistories, which sit *in camerâ*, and by the Russian Penal Code, Article 1038 (1), vol. XV. of the "Corps des Lois," and the Press and Censure Statute, Article 78, vol. XIV. of the "Corps des Lois," publication of all reports of proceedings which are conducted *in camerâ* is forbidden.

In *Spain*, where the Courts have only power to grant divorce *a mensâ et thoro*, in the Civil Courts the court has power to hear *in camerâ*, and in the Ecclesiastical Court such trials generally take place *in camerâ*.

In *Sweden*, the press has full power to publish the reports of all proceedings in the courts, but in some circumstances there can be no publication of such causes, without the consent of the parties if they are alive, or if they are dead, for 50 years after they are dead. Otherwise a fair report is permitted, but anything in the proceedings which is of a disgusting character or is highly offensive to modesty, or which concerns persons who are not parties to the case, and is unreasonably offensive or defamatory, may not be published, unless the judge so orders.

As to *Switzerland*, in all cantons the Court has power to prevent the publication of cases, which could offend public morality, and in various cantons all divorce cases are always heard *in camerâ*.

In the *United States*, there would appear to exist, generally, a feeling throughout that country antagonistic to any interference with the liberties of the press, so that the only restrictions on the right to publish divorce proceedings are those imposed in the interests of decorum or good morals. There are, however, in some States of the Union specific provisions with regard to the power of the court in such matters, which will be found set out in the answers to the questions submitted by Mr. J. Arthur Barratt to American jurists in various States of the Union (Q. 10, in Appendix XII.B., pp. 96–115).

482. As to our colonies, the matter has been the subject of legislation in Queensland and New Zealand. In Queensland, by the Matrimonial Causes Act, 1897, the court has power to hear a matrimonial action in chambers, and may forbid the publication of evidence taken thereat. In New Zealand, by section 65 of the Divorce and Matrimonial Causes Act, 1908, in the Consolidated Statutes of New Zealand, the court may, on the application of either of the parties or at its discretion, if it thinks it proper in the interests of public morals, hear any matrimonial suit or proceeding in chambers, and

may at all times in any such suit or proceeding, whether heard in chambers or open court, make an order, forbidding the publication of any report or account of the evidence or other proceeding therein, either as to the whole or any portion thereof, and the breach of any such order or any colourable or attempted evasion thereof, may be dealt with as contempt of court.

483. It will thus be seen that in all those European countries as to which we have received information, and in certain States of the United States and in the two colonies above mentioned, provisions exist of such a character as to impose much greater restrictions on the publication of matter tending to be prejudicial to morality, where they do not prohibit it entirely, than exist in England. Those laws either require cases of the character in question to be heard *in camerâ*, or give extensive powers to the judges of clearing the courts (with the result that, whenever a case is heard in private, there can be no publication of a report of it), or they prohibit publication. Certain of the Codes contain penalties which are inflicted for the infringement of these provisions.

484. We have already alluded to the very limited powers which exist in England of hearing cases *in camerâ* in the Divorce Court. The only Statute, to which we have been referred, dealing with the subject of publication of such cases in England, is the Statute of 1888 (51 & 52 Vict. c. 64), the Law of Libel Amendment Act, 1888. The 3rd section of that Act is as follows:—

> "A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter."

We may note that the recent Children Act, 1908, s. 111, gives certain powers to courts of summary jurisdiction to hear cases in which children are concerned in private, and the Incest Act, 1908, requires cases under it to be heard *in camerâ*.

Consideration of the Subject.

485. We are in a more favourable position than those who have previously made attempts at legislation on this subject, for we have had a full inquiry into the subject, and have been assisted in forming our conclusions by the great body of evidence, which has been presented to us.

486. Two views were brought before us. One that the publication of reports of divorce and matrimonial cases is unnecessary and undesirable, and bad for the country. Several important witnesses, however, suggest that the anticipation of publication has little, if any, deterrent effect upon the commission of acts of immorality, though it may have an effect upon the course of the proceedings in court. The other that publication is in the general interest, and that the fear of public exposure is a deterrent to the commission of acts of immorality.

487. The first view was supported by a body of evidence of great importance and weight given by a number of persons in what they consider the public interest. As an illustration, we refer to the evidence of Mr. R. Peacock, President of the Chief Constables Association. He presented the views of 98 Chief Constables in England who were, with one exception, unanimous in stating the deleterious effects, especially upon young persons of both sexes of the poorer classes, of the publication of the details of these cases (9288–98).

We also refer to the evidence of Mr. Justice Bargrave Deane (834–43); and to the evidence of the Lord Chief Justice of England, which appears to be so important that we have set out below the questions and answers giving his views upon this matter.

> "15,535. May I pass on to a very important matter, on which your experience will be of the utmost value; that is the question of the publication of divorce cases?—I have the strongest opinion about this. I have worked in a small way upon it for many years in connection with other people who have done more. We deal with this question from the wrong standpoint, I think. I consider there

ought to be the fullest publication of the names of the people who have got into the Divorce Court, to use a popular expression, against whom a decree has been made; whether or not the names of people who have been found not guilty should be published is a difficult question. It depends largely on the wish of the person. In many cases it would be a hardship to say a case had been brought against a man and he had been acquitted, because many people will not notice the acquittal, but will think where there was some smoke there was some fire. I am dealing with the guilty people. The right course is to publish as publicly as you like the names where they have been found guilty either as co-respondents, or as respondents. The other things that ought to be published are the opinions, the judgments of the court, in important questions of practice, and those will be absolutely free from any objection. They are for the guidance of the profession."

"15,536. Those are allowed now?—They, of course, should be published. I only mention that because the question has come before us in connection with criminal law, as to how far there should be reports of such proceedings in the criminal courts, and the judges have resolved that the results of cases should be published, and that the opinion of the judge for the guidance of other people should be published. Once you have done that you do not want anything more from the point of view of publication. Now I come to the evil of it. I have had for years brought to my attention the mischief done by the reports in certain low-class papers of the details of divorce cases. You cannot touch them for indecency in the ordinary sense of the word, or for obscenity. There may be gross cases in which you might be able to, but I am speaking of those which do as much evil, I mean the accounts which are put in head-lines, 'the ladysmaid's evidence,' and 'the housemaid's evidence,' which is followed up in these papers by a detailed account of question and answer; of the servant going to the room and saying what she sees, and incidents which the prurient mind fastens on, which could do infinite harm to young people. It has been said in evidence before this Commission that cases have been known where absolute evil has been done by these stories being read by young people, and I cannot see the slightest ground for the publication."

"15,537. The only ground suggested is that it is a deterrent to people?—I do not believe it for one moment. I am afraid there are people who do not mind their name appearing in the court. If it be a deterrent, it is not as much so as the fact of a person appearing in the black-list as being guilty under circumstances which attract nobody. I cannot understand how that publication can be a deterrent."

"15,538. Your view is that the greater evil by far is the detailed accounts?—Yes. I do not agree about it being a deterrent to the person who has come to the court as a guilty person. It is not a deterrent. The mischief done to the young is incalculable, particularly to boys and girls between the ages of 14 and 18. This Commission has had accounts, I believe true accounts, of the terrible extent to which immorality does exist between people of that age. It is largely promoted by this sort of publication. Ideas are put into their minds, and there is nothing to be gained by it. I want to remind you of what happens. They do not report every case with all these details, but in some of the papers, I am sorry to say frequently the Sunday papers, those that come out on Sunday, you will find extraordinary disclosures, and then there will be one case which will be taken, and all these suggestive details—I do not use the word 'indecent' because the mischief is not done by the indecency of them, but by the suggestion. They are not obscene or indecent; very few of them are within the case of Regina *v.* Hicklin and those sort of cases, but the mischief is done by the suggestions that are made. I have not been able to understand what public use could be obtained by boys and girls or anybody, servants particularly, being allowed to read the details of some adulterous intercourse which has taken place at an hotel, or at some place which has to be proved for the purpose of the court. I have watched this, and I have never seen any advantage, and the best of the Press entirely agree with this view. They do not publish those things; it is only the papers that are cheap and do harm that publish the detail. Therefore it is not necessary in the administration of justice it should be done. We have never grappled with this evil with half the courage we ought to have."

488. Further, evidence was given as to certain detrimental effects, by the fear of publication in these cases, upon the proper administration of justice, *e.g.*, deterring nervous persons from going into the witness box to support their cases; hindering witnesses from coming forward and giving evidence; providing opportunities for improper pressure being put upon parties, either to stop their cases, or not to defend, or even to pay money to prevent exposure.

489. It was also suggested to us that one of the worst results of permitting the details of these cases to be circulated, quite apart from the feelings and interests of the parties to such cases, is the fact that innocent children have the opportunity of reading the miserable details of their parents' lives which, although they would naturally become aware of a decree and its consequences, might never be brought before them unless by the public newspapers.

490. We have also had a number of witnesses representing the Press who agree with most other witnesses in thinking that the publication of minute details of these cases is an undoubted evil; and who have told us that, while the abuse of publicity is mainly confined to papers of a certain class, yet that the better class papers think themselves compelled by the competition of others less scrupulous to give more particulars than they otherwise would. It is admitted that many of the readers of newspapers complain of the publication of these reports.

491. The other view was, as stated above, that publication acts as a deterrent to the commission of acts of immorality, and that it was in the public interest that divorce cases should be fully reported.

492. Efforts were made to obtain the attendance of witnesses, to whom questions might have been directed with regard to Sunday and other weekly publications, but we have not been able to secure their attendance (the Secretary, 37,209 *et seq.*, 37,241–3).

493. The evidence of the witnesses connected with the Press deserves careful study. We do not think we can usefully attempt within reasonable bounds to set out all their views, and give all the reasons with which they supported their conclusions. But we think it will be of use to indicate, from their evidence, to what extent suggestions were made for the amendment of the law and practice.

The first witness was Mr. A. G. Jeans, managing director of "The Liverpool Daily Post" and other Liverpool papers (37,259–37,437), who suggested (37,274) that the newspapers should not be permitted to give the evidence in divorce cases, but simply the summing-up or judgment of the judge. This witness among other matters stated that which appears to be in accordance with the evidence of most of the witnesses who spoke on this subject, viz.: that, on the whole, the reports have been given as inoffensively as possible by the more reputable journals, but that there is a class of paper—chiefly weekly penny papers which have mainly a working-class circulation—which gives great prominence to and pretty full details of such reports.

Mr. Russell Allen, proprietor of "The Manchester Evening News" (37,438–37,551), had no hesitation in saying that the proprietors of newspapers, who have a proper sense of their responsibilities, would welcome regulations, which would keep the reports of divorce cases within such limits as to be harmless to the public, without shielding the guilty parties from the publicity they deserved (37,446). He suggested (37,447–8) that there should be an official reporter connected with the court, who would know what was proper to give, and to whom others might apply, and thus competition would be avoided.

Mr. John Thomas Smith, Chairman of the Central London Branch of the National Union of Journalists (37,552–37,665), did not suggest direct interference with reporting, but thought (37,581) that, if societies of newspaper owners and the various kindred organisations throughout the country are appealed to, they could do something to stop the publication of extremely offensive details.

Mr. Charles Moberly Bell, the late managing director of "The Times," (37,666–37,816), suggested (37,685) that it would be possible for the Divorce Court to exercise an indirect but effective control over reports, if the publication of any such report were forbidden, unless signed by one of a corps of reporters licensed by the Divorce Court to report, and whose licence could be revoked.

Mr. H. A. Gwynne, editor of "The Standard" (37,817–37,949), thought (37,819) that the greater number of journalists do not approve of legislation in matters which concern the conduct of their papers, and that the difficulties in the way of legislation will be so enormous as to render it almost impossible; would see (37,827) no objection to the court closing its doors in any case of an offence of a sexual character; found, from inquiry among his colleagues and friends on the press as to what rules govern their conduct, that they are practically unanimous in keeping out anything of a sordid and filthy nature (37,828); thought that the restriction of publication to the judgment or summing-up would meet the case (37,828–9); thought it was on the lines of education that progress towards the elimination of obscene, filthy, and suggestive matter in the press will be best and most thoroughly attained (37,835); and said that, as far as he was concerned, he should be delighted to see all reports of these cases cleared away by law (37,881–97).

Mr. Harold Hodge, editor of "The Saturday Review" (37,950–38,059), proposed three alternatives, either no report, or a report of results, or a report supervised in some way (37,955–6), and he preferred no report.

Mr. J. S. R. Phillips, managing editor and editor-in-chief of "The Yorkshire Post" and its other papers (38,060–38,248 and notes in Appendix XVII., pp. 136–40), was generally against legislative restraint on publication, but was opposed to the publication of any matter which is obscene or indecent (38,083), and thought there may be an excess in the amount of publication of reports, and he would not deny that there is in some cases; he did not see how to limit it, without going further than he would think desirable, that is, how to limit it by legal means; it can be limited by editorial discretion; that is one way (38,084). He thought there ought to be a somewhat stricter rule in regard to the checking of the publication of indecent matter, and would support any change in the law or any additional strictness of administration, which would deal with that all round (38,101, 38,151, 38,177).

Mr. John St. Loe Strachey, editor of "The Spectator" (38,249–38,273), suggested that it should be the practice of the judge, whenever he is of opinion that the reporting of evidence or of statements by counsel would be injurious to the public interest and contrary to good morals, to indicate to the reporters and to all persons present in court that such-and-such testimony by witnesses or statements by counsel ought not to be published in the press or elsewhere, and that he would treat the publication of the passages as contempt of court (38,252).

Mr. Sidney Low, formerly editor of "The St. James' Gazette" (43,339–43,393), mentioned several alternatives, but in answer to Question 43,367 said, "I suggest "that the way out of the difficulty is to prohibit full publication by the newspapers "and to substitute a brief official report. I think that is the way out."

Mr. W. T. Stead, late editor of the "Review of Reviews" (43,394–43,470), had no objection to the prosecution before a jury of any book, magazine, or newspaper which publishes obscenity, even in a privileged law report, unless it can be proved that without such obscenity the law could not be intelligently reported (43,403), but would otherwise rely on the force of public opinion and moral suasion and the discretion of the editor (43,403–22, 43,445).

Mr. C. P. Scott, editor of "The Manchester Guardian" (43,471–43,528), while admitting that a very great deal is published which is to be extremely regretted and is extremely reprehensible, appeared to attach primary importance to the freedom of the Press, and thought that on the whole the disadvantage of any restriction would outweigh the advantage, and that all the suggestions made to the Commission seemed to him either undesirable or impracticable (43,500 *et seq.*, 43,517), but that the law against obscenity should be enforced (43,512).

Mr. David Edwards, managing director of the Nottingham Daily Express Company, Ltd., and formerly general manager and editor of "The Daily News" (43,529–43,559), favoured reports of divorce cases being published, giving anything that is of value from a legal point of view, or which might be of value in the case as governing certain aspects for reference in similar cases, and would have no personal objection to go the length of abolishing any report of any kind whatever of a divorce case, but does not advocate it (43,547–50).

494. With the evidence before us, we take it as established that the evils of excessive publication are real and serious. When we come, however, to consider the remedies, we are confronted with a great variety of opinions. On the one hand, it is admitted that the liberty of the Press should be exercised for the public benefit, and is not so

exercised when it is used to disseminate among the masses of the people literature of a demoralising tendency; on the other hand, there is a genuine anxiety lest, in seeking to cure this abuse, we should obstruct the free play of a healthy public opinion.

495. While recognising to the full the force of the public sentiment in favour of the liberty of the Press, we are yet of opinion that, in the special class of cases we have to consider, the general privilege of the publication of reports is not adequately limited by the said third section of the Act of 1888.

496. The question then is, how should the evil be dealt with? Various suggestions have been made as to the prevention or limitation of reports.

Two things have to be borne in mind. First, the effect upon the public of the publication of these details, and second, the difficulty of properly administering justice in this class of case in open Court, where witnesses have frequently a difficulty in giving their evidence.

497. We recall the facts already mentioned. It is the practice to take certain exceptional cases *in camerâ*, for instance, nullity cases on the ground of impotence. This practice has always existed in the Ecclesiastical Courts, which Courts seem to have acted on the principle that they had power to hear any case in private, if they chose to do so. Another instance of cases, which are by Statute to be heard *in camerâ*, are those under the Incest Act of 1908.

Again, there is the decision of the late Lord St. Helier (Sir Francis Jeune), in which, as we understand, he considered that, in the interests of decency, or in the interests of justice, where the case could only be properly tried *in camerâ*, he had power to close the court.

This was a case reported in L.R. [1903] P. 144, under the title of *D.* v. *D.*; *D.* v. *D.* and *G.*

The headnote is as follows:—

> "The court possesses inherent jurisdiction to order any case to be heard *in camerâ* in a suit for judicial separation by a wife the particulars in which disclosed allegations of filthy practices, but in which no suggestion was made of sodomy or bestiality. The court, notwithstanding the fact that with the wife's suit had been consolidated a suit by the husband for dissolution of the marriage on the ground of the wife's adultery with the co-respondent, ordered, with the consent of all parties, that the case should be heard *in camerâ* by a judge sitting with a special jury."

Lord St. Helier in his judgment referred to the difficulty he had felt in hearing such cases in public, and to the difficulty of not being able to press questions to the extent that they might be pressed, because of details which no right-minded person would wish to press before a mixed audience of men and women. He said that, "If justice "cannot properly be done by hearing a suit in public, the court is justified and has "power to hear it *in camerâ*."

498. It seems probable that, although there is no statutory power to close the court, if a trial cannot be properly conducted with decency and justice, the judge has inherent power to order the court to be closed, a power, however, which he would feel some difficulty in exercising unless he felt himself backed by express statutory enactment. Lord Halsbury, in the debate on the Publication of Indecent Evidence Bill, 1896, said on this point:—

> "It had been held that the Lord Chancellor or the judges having jurisdiction in lunacy, had power to sit with closed doors in lunacy, and it had also been held that the Court of Chancery had power, when dealing with its wards, to hold its inquiries with closed doors. These cases were not exceptions to the general rule, because, in the ordinary sense, the administration of justice was not concerned. The only other case he was aware of, of power to try a case with closed doors, was that where the object of the action might be absolutely destroyed by the hearing in public. He was not aware of the right of the Divorce Court to sit *in camerâ*."

Lord Halsbury did not consider that a case could be heard *in camerâ* by the consent of the parties.

499. We may here notice that the Act of 1888, the clause of which is above set out, uses the words "indecent matter,"

Reputable newspapers in this country which have regard for their duty towards the community do not publish reports of an indecent character, and, indeed, it would be generally difficult to find, in any newspaper, reports which can be strictly called indecent within the meaning of positive legislation, so as to subject the offenders to prosecution. But where prominence is given to reports of divorce and matrimonial cases, and they are reported in detail, the reports dwell in an excessive degree upon sexual relations, and tend both to bring marriage into disrespect, and to create a demand for reading of this character.

500. Among the suggestions which were made to us were the following:—

(1) The exercise of discretion by the judge as to what should be reported, which would involve revision by him of the reports; (2) revision of the reports by an official appointed for the purpose; (3) reporting by official reporters; (4) reporting by licensed reporters.

In substance, these suggestions, and possibly others of a similar character, involve the revision of reports, so that no suggestive details shall appear in them, and a large restriction upon the present rights of the Press.

501. None of these suggestions appear to us either practicable or desirable, and we do not recommend their adoption.

502. Some other suggestions were made but, in our opinion, the only practicable alternatives, which can profitably be considered, are:—

(1) Hearing *in camerâ*, which necessarily involves the prohibition of publication.
(2) Hearing in open court, with prohibition of publication.
(3) Hearing in open court, with prohibition of all reports, except a record of the names of the parties, the charges made, and the result.
(4) Hearing in open court, without prohibition of publication, but with restraint of such publication as is beyond all necessity in the public interest and is deleterious to public morals.

503. As to the first method, we think that it is opposed to general English sentiment, and we do not recommend its adoption, except in cases which are at present heard *in camerâ*, and in other cases which, if our recommendations be adopted, ought to be heard *in camerâ*, *e.g.*, nullity on the ground of non-disclosed disease.

504. With regard to the second and third methods, we consider that there are many difficulties in the way of complete prohibition of publication of reports of cases heard in open court, even if the jurisdiction of the court remain as at present. Such prohibition would, in our opinion, be contrary to the general principle that that which is heard in public should be open to general reporting.

505. But there is another reason affecting these methods, which we do not think was in the minds of those who gave evidence upon the point. Under the present system, the great mass of the cases heard in the court are cases of divorce on the ground of adultery. But if the other causes which we have recommended or any of them should be introduced as grounds of divorce, cases of adultery will no longer be the only cases which are heard in the court: cases will be heard in which no sexual details will be involved, and cases of divorce on the ground of adultery will only form part of the general work of the court.

Cases of desertion, cruelty, insanity, drunkenness, and imprisonment do not necessarily involve any unpleasant details of a sexual character. They would not necessarily excite any morbid curiosity, and there is no special reason for applying to them a principle different from that which is applied to the hearing of any ordinary case heard in court. It follows, therefore, that evidence, which had in view the cases that now form the chief business of the court, does not apply equally to other cases, which will arise if the recommendations of this Report are adopted, and we think that publicity will be an important element in the new jurisdiction that we propose. We are, therefore, unable to recommend either complete prohibition of publication, or limitation in the manner suggested in the third method.

506. The fourth method suggested would, however, in our opinion, meet the difficulties of the matter, and the only question then would be in what manner and to what extent should restraint be imposed.

Conclusions.

507. We think that the following suggestions would meet the difficulty.

508. It seems possible that a judge hearing a case or any proceeding has power to close the court for the whole or part of a case, if the interests of decency, morality, humanity, or justice so require. This power at present remains in a somewhat vague condition, and judges feel difficulty in acting upon it without express statutory provision.

Our *first suggestion* is that such a power should be expressly conferred by Statute.

509. A power of this character was exercised, as already stated, by the Ecclesiastical Courts, and is still exercised in nullity cases on the ground of impotence, which are not suitable to be heard in public. Other cases may arise under our recommendations which may require the exercise of such a power, *e.g.*, nullity on the ground of non-disclosed disease, &c.

510. We may further illustrate the need of such a power in this way. In many cases of sexual misconduct, the details may be so contrary to the interests of decency and morality that they ought not to be heard in public nor be published. In some cases, where children are giving evidence against a parent, it may be contrary to the dictates of humanity that they should be compelled to give their evidence in public; and again, in some cases it is practically impossible for some witnesses to do adequate justice to their evidence, if they are compelled to give it in a crowded court, and justice seems to dictate that the judge should be enabled to take their evidence in circumstances which would be free from this embarrassment; and, again, such a power might enable the parties to produce evidence from persons who, for various reasons, refuse to give evidence at all under present conditions.

511. Apart from the cases, which it may be necessary to hear *in camerâ*, there are other cases in which portions of the evidence, correspondence, documents, or speeches may be unsuitable for publication in the interests of decency or morality.

The *second suggestion* is that statutory power should be given to a judge to order in court during the conduct of a case or proceeding, or at its conclusion, that the portions of the evidence, &c., of the character referred to must not be reported or published. This second suggestion is in accordance with the great weight of the evidence.

512. The second suggested course will be rendered easy by the adoption of the third suggestion made later, though it would not be so practicable under the present system of reporting and publishing as a case proceeds.

513. The ground for closing a court, or of making such an order as aforesaid, should be stated by the judge at the time. The judge in exercising those powers should have regard to the possible effect on the character of individuals who may be brought into the proceedings.

514. The *third suggestion* is that there should be no publication of the report of a case or proceeding until after it is finished.

An unhealthy and unnecessary interest is created in cases, which are prolonged by the continued publication day by day of the account of the proceedings, assisted by posters drawing attention to them; persons who have no real interest in the case are thereby attracted to the court; and a case reported in this way attracts far more attention than is reasonable.

The only possible objection that we can see to this course is that in some cases it is possible for persons to come forward as witnesses who might not be able to do so, if a case were only reported after it was over. But we believe that this is a

matter of very rare occurrence, and that this objection is entirely outweighed by the general considerations on public grounds which we have presented. Moreover in these cases the King's Proctor will have power to intervene, if matters which ought to have been before the court are afterwards drawn to his attention.

We venture to hope that the Press generally will be disposed to welcome this suggestion, as considerably reducing the space which they require to give at present to reports of cases lasting for a considerable time. The effect would be largely to reduce reports of sensational cases, not only in the daily press but also in the weekly papers, which probably utilize the daily reports in order to make up their weekly edition.

515. The *fourth suggestion* is that publication of pictorial representations, whether produced from photographs, drawings, or otherwise, of parties, witnesses, or others concerned in divorce and matrimonial cases should not be permitted.

On August 9th, 1906, Lord Gorell, then President of the Divorce Division, in order to put a stop to a practice which had grown up, directed that sketching in court would no longer be permitted, on the grounds (which he publicly stated) that he was convinced that many persons who have to give evidence in cases in the court were embarrassed and rendered more self-conscious and nervous than they otherwise would be to an extent which affected the proper giving of their evidence, and that this acted to their prejudice, and might thus interfere with the due administration of justice. He said, further, that pictorial illustrations, which may draw attention to divorce cases, are not necessary, nor can they be said to be really desirable in the public interest, but the action he proposed to take was on the grounds already stated; that he did not suppose that it had been realised how the taking of these sketches might affect the witnesses in the course of the cases, and that he expected that he had only to intimate how the practice might affect trials there, and those who have hitherto followed it would realise the effect which he and his brother Judge thought it had, and would cease from the practice. (*The Times*, 10th August, 1906.)

The rule only applied, in terms, to sketching in court, but intimation was afterwards, on 12th March, 1907, given to the effect that the President and his brother Judge entertained a strong opinion as to the undesirability of directing special attention to cases in the Divorce Court, by illustrations taken, either in or out of court, principally on the ground of the effect which they have on the proper trial of cases in the court, and also on the ground that it is not in the public interest that such illustrations should be published. The President further stated that it had been a source of gratification to him that his views on the subject had met with acceptance and been acted on, and that he was satisfied that a very distinct and noticeable benefit to the administration of justice in the court had resulted, that he had been informed that since last August in only one or two instances had any such illustrations appeared, and he had some ground for supposing that these may have been due either to inadvertence or to misappreciation of what he had intended to convey, and hoped that after this statement it would not be necessary to refer to the matter again. (*The Times*, 13th March, 1907.)

Since that time we understand that not only has the rule laid down been generally observed by the Press, but that they have themselves voluntarily accepted and acted upon the suggestion made, so that illustrations even from sources obtainable outside the court have practically ceased.

Our fourth suggestion, therefore, will only declare what is now commonly acted on, but will prevent the publication of these illustrations by anyone who chooses to depart from the course adopted by the Press generally.

516. We recommend that any publication relating to a case heard *in camerâ*, or to that part of a case which may have been heard *in camerâ*, which infringes the provisions made for giving effect to these suggestions, should render the person infringing liable for contempt of court.

517. This recommendation, however, is not intended to affect such rights, if any, as may exist of reporting without names in recognised legal publications such legal points as occur in cases before the courts.

518. It is difficult to draw any conclusion from the experience of other countries. A rule of privacy for the Divorce Court may follow either from a fear of contaminating

the public mind, or from a lenient view of matrimonial offences and a general disposition to regard the dissolution of marriage as a private affair of the parties concerned, in which the public has no interest, and the characters of the litigants are not at stake. The English view is that divorce is a grave matter, which concerns the public as well as the parties, and in the English courts the characters and the future prospects of the litigants are seriously at stake. This establishes a presumption, which we feel it impossible to ignore, in favour of publicity for divorce, as for other legal proceedings.

At the same time, we have been greatly impressed by the evidence which has been laid before us as to the corrupting and demoralising consequences which follow from an excess of publicity in this class of cases; and while proposing certain safeguards and limitations which we believe will greatly mitigate this abuse, we should like further to express our hope that the proprietors and conductors of newspapers will do their utmost of their own free will to check what they have acknowledged to be a serious evil. The witnesses, who have appeared before us on behalf of the newspapers, have been unanimous in condemning the excess of this class of reporting, and many of them have deplored the competition which, as they think, compels them to do more than they would desire to do, if they were free agents. We feel confident that the attention which has been drawn to this subject will strengthen the hands of those who desire to raise the standard in this matter, and help them to exert their influence on the side of moderation.

519. If it should be found that the provisions we have proposed have not the effect which we anticipate, it may be necessary for the Legislature to strengthen the law further in the direction of prohibiting reports which are deleterious to public morals.

520. Our functions in this report, so far as publication is concerned, are limited to recommendations with regard to the publication of reports of matrimonial cases and applications for separation orders; we have already made some suggestions with regard to separation orders, and have now expressed our views with regard to matrimonial cases; but these matters form, in our view, only part of a much larger question as to the reporting of civil and criminal cases, which may contain matter deleterious to public morals. If any general legislation on this subject should at any time hereafter be introduced, the whole subject would naturally be dealt with. At present we make the suggestions aforesaid for the purpose of dealing with the particular classes of cases, which we have under our consideration.

PART XVIII.

The Position of the Clergy of the Church of England.

521. We have already set out the 57th and 58th sections of the Act of 1857 (p. 16), which provide that no clergyman of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved on the ground of his or her adultery, but that, if any minister of any church or chapel of the said Church shall refuse to perform such marriage service between any persons who but for such refusal would be entitled to have the same service performed in such church or chapel, any other minister of the Church of England, entitled to officiate within the diocese in which such church or chapel is situate, may perform such service in such church or chapel.

522. It will be noticed that these clauses only dealt with the re-marriage of a person, whose previous marriage has been dissolved on the ground of his or her adultery. The Bishop of St. Albans (Vol. II., p. 340 *et seq.*) pointed out the difficulties which at present arise, where a man or woman has obtained a divorce outside England on grounds not recognised by the Act of 1857, and desires to enter into a second marriage in church in England. He referred to a letter expressing the opinion of his Chancellor on the points, and stated that the provisions of that Act only applied to divorces in the English Divorce Court.

The following passages from his Lordship's evidence summarise his views on the position sufficiently for present purposes :—

> "21,111. . . . I only wish to say this (because I wish to confine my evidence to this particular point—the liability in respect of taking marriages of divorcees), I want to say just this. First of all, it is felt by a great many of the clergy to be a very serious grievance that they are obliged to marry anyone who has been divorced. It is almost unanimous, I think, the feeling that the guilty person in a divorce case ought not to be married in church, albeit if by the Divorce Act the guilty person is able to force such a marriage if any clergyman can be found to do it. But if the law were to go further, and to extend the grounds on which divorce is given, and if, further, the law is, as my Chancellor, Mr. Kempe pronounces it, and a clergyman is now bound to take such a marriage, and the only way in which I can help him is by vetoing a prosecution which may be brought to bear upon him in the Ecclesiastical Courts, then I can only say that the relations between Church and State will be strained to their very last possible point. I do not hesitate to say for myself that the conclusion which I have been coming to for a long time, a conclusion which many others besides myself have come to (it is not a conclusion which will be very palatable to every one, but it is a conclusion which I have seriously come to) that the only final solution is to be found in universal civil marriage, the religious bodies being free to lay down their own rules with regard to the bestowal of the Church's benediction."
>
> "21,112. I might supplement by suggestion your two cases of divorce which you mentioned—one American people and the other Ceylon people—by the case of Scotland. I dare say you know that divorce can be obtained there by domiciled Scotch people on the ground of malicious desertion alone?—Yes."
>
> "21,113. What you have been saying, I take it, would apply very forcibly to that class of case?—I think so."
>
> "21,114. If one of those parties desires afterwards to be married in England, it is analogous to the two cases you have given?—It is."
>
> "21,115. That might very frequently happen?—I have not myself come in contact with it, but I have no doubt it might happen constantly."
>
> "21,116. I mean there is a ground there which at present is not recognised as a ground in this country?—True."
>
> "21,117. How does what you have been good enough to put before us bear upon the position in case the English Divorce Act extended the grounds (a new Act extended the grounds) to such cases as are at present recognised in some other countries; for instance, to take the concrete case of malicious desertion?—I venture to think it would so strain the relations between Church and State that you would have an absolute refusal on the part of a great number of the clergy to take such marriages under any circumstances whatever. It is held

that while the essence of marriage is in contract, the blessing of the Church ought not to be asked for in cases where the divorce is granted on grounds which apparently are not recognised in the Word of God at all—in the Bible—and have never been recognised by the Church as a divine society; and therefore the clergy generally, if they were asked to take marriages, if the grounds of divorce were to be extended, I venture to say they would absolutely refuse—the great body of them."

"21,118. I think that is really all you wanted to put before us?- That is all.

"21,119. May I sum it up in this way: the position that the Church would be placed in, if divorce was granted on the grounds which they conscientiously think ought not to be permitted?—Yes."

* * * * *

"21,156. (*Lord Guthrie.*) Now, Bishop, why cannot it be met by a protecting clause which would prevent the distinct situation you have put, and exempt clergymen from either marrying in the case you object to, or admitting to the privileges of the Church in cases where you think privileges should not be given?—I have no objection if that can be done; whether it can be done the Commission must consider."

"21,157. If it could be done, that would void the risk?—Yes, I admit if it could be done in a way to protect ministers of religion."

"21,158. Would your objection to marrying a divorced person who was innocent apply in a case where in a foreign country (a country outside England) a wife had got divorced for adultery alone; would you equally exclude her?—That raises rather the general question on which I should rather, if I may, be excused from giving evidence. I want to confine my evidence to this particular point."

"21,159. But you would cover that case?—I should cover that case, but I wanted not to give evidence on that particular point."

"21,160. No, I am not asking that, my Lord, in the least. Do you know whether in the Scotch Episcopal Church there has ever been a refusal to marry an innocent person who has divorced her husband, or a man who has divorced his wife for desertion?—No, I have not heard it."

"21,161. (*The Archbishop of York.*) With regard to the suggestion made that there might be a protecting clause to protect the conscience of the clergy, does not the further difficulty remain that if there was any protecting clause some clergy might refuse to avail themselves of it, and celebrate marriages of the kind of which you have been thinking?—If it were done to that extent as you suggest, it would be, I am perfectly certain, a very serious evil indeed; I mean so serious, that if some of the clergy were to marry persons who were known to be divorced on grounds which most of us would hold to be invalid, or insufficient for divorce, I am quite certain there would be such a strong feeling in the Church of England—so utterly strong a feeling—that again I say the relations between Church and State would be very much imperilled."

"21,162. So that really the strain would not be removed by merely a protecting clause protecting such clergy who did not see their way to celebrate such marriages?—It would not be an adequate protection."

"21,163. And would you say there was not only the conscience of the clergy to be considered but the consciences of the laity?—Distinctly."

"21,164. And would not you say that a clergyman refusing to celebrate such marriages would give such offence as to make his position in his church very difficult?—Perfectly true; in this Hertfordshire case the clergyman solemnized the marriage, but gave very dire offence to some of his people by doing it."

"21,165. So I may take it that the protecting clause, as you have suggested, would be only some measure, but not an adequate measure, of relief?—Yes, I agree to that."

523. The terms of our Commission do not entitle us to enter into a general inquiry as to the marriage laws in this country, nor into the important and large questions raised by the points indicated by the Bishop of St. Albans as to universal civil marriage and the general position of the Established Church towards questions arising out of the marriage and divorce laws. These matters must be left by us for the consideration of the Legislature.

524. An alteration in the Act of 1857 would, however, appear to be required, if our recommendations as to extending the grounds upon which divorce can be obtained should be adopted. The protecting clauses in that Act would then be inadequate, those clauses being confined in the manner already stated. Acting on the principle upon which those clauses were introduced, it would follow that they would require extension, if the conscientious objections of those who object to divorce altogether, or on any ground other than adultery, are taken into consideration. The extended clauses should apply not only to divorces granted in England, but to those granted abroad.

525. At the same time, whatever protection or measure of liberty may be provided for those who maintain the objections aforesaid, it must be remembered that there are others, both clergy and laity, who do not support them, and we think that freedom of opinion and action should be preserved to them.

The Marriage Laws.

526. An inquiry into these laws and their working is not authorised by the terms of our Commission, but many witnesses have attributed much of the matrimonial troubles, miseries, and misfortunes, which exist, to the present state of these laws, and have incidentally expressed themselves on the need for their improvement on the ground that they permit far too freely of improvident, reckless, and unsuitable marriages, which lead to disastrous results. They point to the power to contract marriage at an age too early; to the need for further and more stringent provisions as to obtaining the consent of parents or guardians to the marriage of minors; to the need for more adequate public notice of intended marriages, and more publicity and formality in marriages before registrars; to the want of any provisions for ensuring the fitness of persons, mentally and physically, to marry, and that they have any adequate means of livelihood; and to other matters which render a marriage unsuitable. Though we are not able to inquire into and make recommendations on this important subject, we have felt that its close connection with the subjects of our inquiry made it impossible to exclude the incidental statements to which we have referred, and that we ought to make this reference to the subject in our Report.

The Effect of the Inquiry.

527. The inquiry is confined to the state of the English law and its administration, but we feel that its effect will be recognised and felt outside this country. We have shown the diversity of law prevailing in the United Kingdom and the British Dominions, as well as the laws of other countries.

We have shown, as we consider, the unsatisfactory state of the law in England and its need of reform. We have endeavoured to recommend reforms which, in our opinion, ought to be the foundation of a reasonable law suitable to real human needs, and, if our recommendations be adopted for England, it may be hoped that in time they may be accepted throughout the Empire and possibly in other countries. The movement for uniformity of law, in certain respects similar to our own recommendations, has already begun in the United States of America; and, in view of the substantial identity of the matrimonial relationship and social position of the family among those nations which are European or of European origin, the hope may be expressed that uniformity of marriage and divorce laws may in the end be achieved among those nations, and that at any rate such uniformity may be reached throughout the British Empire among those subjects of the Crown with whom monogamy prevails.

SUMMARY.

528. The main proposals in this Report may be summarised by presenting in a concise form the substance of the recommendations which deal with the more important points which have been considered. The minor points, many of which deal with procedure and practice and details, need not be here summarised.

RECOMMENDATIONS ON THE MORE IMPORTANT POINTS.

I.—*Under Part X.*

(1) That the High Court should hold sittings and exercise jurisdiction locally for the purpose of hearing and determining divorce and other matrimonial causes by Commissioners appointed for that purpose.

(2) That the country should be apportioned into districts corresponding with the present circuits of the High Court, subject to such modifications as might prove convenient, and a metropolitan district.

(3) That there should be a Commissioner for each district or combination of districts who should be selected by the Lord Chancellor from among the county court judges or persons qualified to be appointed Commissioners of Assize, with power, if it were found necessary or convenient to have more than one Commissioner for a district, to add another.

(4) That the Commissioner, while in office as such, should have all the powers of a judge of the High Court of Justice and all the jurisdiction of the High Court of Justice in these cases, subject to rules of practice as stated.

(5) That the sittings should be at each place where there is a registry of the High Court, and at such other place or places at which the Lord Chancellor should think sittings may be reasonably required, and that registries should be established at such place or places with the necessary powers.

II.—*Under Part XI.*

(1) That the actual exercise of jurisdiction locally should in practice be confined to cases in which the joint income of the petitioner and the respondent is not more than 300*l.* per annum and the assets not more than 250*l.*

(2) That simplified procedure and practice for these cases as explained in detail should be adopted, special tables of fees and costs fixed, and provisions (as suggested in Part XVI.) made as to proceedings *in formâ pauperis*.

III.—*Under Part XII.*

(1) That the power of Courts of Summary Jurisdiction to make orders having the permanent effect of a decree of judicial separation should be abolished.

(2) That the jurisdiction of Courts of Summary Jurisdiction to grant separation orders and maintenance orders should be preserved, but the exercise of such jurisdiction should be limited, so that orders should only be granted where they are necessary for the reasonable immediate protection of the wife or husband, or the support of the wife and the children with her.

(3) That if it is or becomes necessary for parties to be permanently separated, application for that purpose should be made to the High Court by a simple process.

(4) That jurisdiction under the Licensing Act of 1902 should be maintained, but limited to a period as stated in Part XIII.

IV.—*Under Part XIII.*

That amendments as recommended in Part XIII. be made in the Summary Jurisdiction (Married Women) Act, 1895, and the provisions of the Licensing Act, 1902, relating to separation in cases of habitual drunkenness.

The principal recommendations in the said Part are:—

1. That the grounds upon which orders may be made should be—
   - (i) Cruelty by the respondent to the applicant.
   - (ii) Habitual drunkenness on the part of the respondent.
   - (iii) Wilful desertion by the respondent of the applicant without the consent or against the will of the applicant and without reasonable cause.
   - (iv) Neglect by the husband to provide reasonable maintenance for the wife or her infant children whom he is legally liable to maintain.

2. That "cruelty" should be defined as recommended, and should include the acts specified.
3. That "habitual drunkard" should be defined as recommended.
4. That orders on the grounds aforesaid may be applied for by either husband or wife.
5. That the proposals made as to amendments as to the powers of Courts of Summary Jurisdiction and in their procedure and practice, &c., should be adopted, and among these—

(i) That, if a permanent order become necessary, it should be left to the Superior Court to make such order either for judicial separation, or for divorce if the case is one in which there are grounds for divorce and that remedy be claimed.

(ii) That no separation order made by a Court of Summary Jurisdiction should be continued for a period of more than two years from the date of the original order separating the parties.

(iii) That separation orders should not be made in cases of desertion or neglect to maintain, but only maintenance orders.

(iv) That an order for maintenance should be enforceable after seven days.

(v) That the suggestions made as to enforcing payments under deeds of separation and of treating such deeds as ended in certain circumstances should be adopted.

V.—*Under Part XIV.*

That the law should be amended so as to place the two sexes on an equal footing as regards the grounds on which divorce may be obtained.

VI.—*Under Part XV.*

That the law should be amended so as to permit of divorces being obtained on the following grounds:—

1. Adultery;
2. Desertion for three years and upwards;
3. Cruelty;
4. Incurable insanity after five years' confinement;
5. Habitual drunkenness found incurable after three years from first order of separation;
6. Imprisonment under commuted death sentence.

VII.—*Under Part XVI.*

(1) That amendments should be made in the law, procedure, and practice relating to divorce and matrimonial causes as suggested in detail, the more important amendments being:—

1. That British subjects domiciled in England, but resident elsewhere in the Empire, should be permitted, if their cases can be tried in the place of their residence within the British Dominions, to have the decree registered in England; and that the decree, when registered in England, should be operative, as if made in England, if made on grounds permitted by the law of England. (*See* Part XVI., Chapter I., on this subject.)
2. That where the husband and wife are domiciled within the jurisdiction at the time of the commencement of the desertion of the wife, she may maintain a suit, as if the domicil remained what it then was, and that the provisions suggested as to other cases of change of domicil should be adopted.
3. That the court should have jurisdiction to entertain any matrimonial suit by a wife, whose husband has been deported under the provisions of the Aliens Act, which the court would have been able to entertain, if the person so deported were domiciled in England.
4. That whether habitual drunkenness be made a ground for divorce or not, the High Court should have jurisdiction to deal with cases of separation on this ground.
5. That where the courts of any other country, in the exercise of jurisdiction conferred upon them by the law of that country, declare a marriage null,

the English court should be at liberty to pronounce it null also, even though it may have been celebrated in accordance with the law of the place of celebration.

6. That a party should be entitled to obtain, and the court have jurisdiction to pronounce, a decree of nullity in the following cases, as more precisely stated in Part XVI., Chapter I., but for convenience summarised thus :—

(i) Where the other party is of unsound mind at the time of marriage, or in a state of incipient mental unsoundness, which becomes definite within six months after marriage, of which the first party was then ignorant, provided that the suit be instituted within one year of the marriage, and there has been no marital intercourse after discovery of the defect.

(ii) Where the other party is, at the time of the marriage, subject to epilepsy or to recurrent insanity, and such fact is concealed from the first party, who remains ignorant of the fact at the time of the marriage, with a similar proviso to that last mentioned.

(iii) Where the other party, at the time of the marriage, is suffering from a venereal disease in a communicable form, and the fact is not disclosed to the first party, who remains ignorant of the fact at the time of the marriage, with a similar proviso to that aforesaid.

(iv) Where a woman is found to be pregnant at the time of her marriage, her condition being due to intercourse with some man other than her husband, and such condition has not been disclosed by her to her husband, with a similar proviso to that aforesaid.

(2) That a party to a marriage should be entitled to apply to the court for an order of presumption of death, and to obtain an order, and on such order being made absolute, the applicant should be entitled to contract a valid marriage in the two following cases :—

1. Where the other party has been continually absent from the first party for the space of seven years and shall not have been known by such party to be living within that time.
2. Where a party to a marriage, who reasonably supposes the other party to the marriage to be dead, but the fact cannot be definitely ascertained, satisfies the court that there is reasonable ground for declaring the second party to the marriage to be dead.

(3) That amendments be made in the procedure and practice of the court as suggested in detail, the principal amendments being :—

1. That, while adultery be retained as a defence, the court should exercise its discretion to pronounce a decree according to the circumstances of the case.
2. That defences in cases of judicial separation should be on similar footing to those in cases of divorce.
3. That the 5th section of the Act of 1884 (*see* Part V.), which gives immediate rights to proceed for judicial separation or divorce, on non-compliance with a decree for restitution of conjugal rights, should be repealed.
4. That the proviso in section 43 of the Act of 1857, and also that in section 3 of of the Evidence Further Amendment Act, 1869, should be repealed.
5. That the court should make a decree absolute on the application of either party at the expiration of the proper time for the pronouncing thereof (unless there be an intervention in the meantime).
6. That a decree absolute should be unimpeachable after the expiration of five years from the time when it was made.
7. That the court should have power, in its discretion, when a decree of separation is asked for on grounds found by the court which would justify a decree of divorce, to make a decree of divorce on the application of the respondent.
8. That for the right to recover damages against a co-respondent there should be substituted a power to make orders against him or his property as suggested in Part XVI., Chapter III., and that provisions of a similar character should be made with regard to orders against a woman found guilty with a respondent husband.
9. That all divorce and matrimonial causes should be heard before a judge alone.
10. That the suggestion as to costs should be adopted.

11. That provisions as suggested in detail in Part XVI., Chapter III., should be made with regard to proceedings *in formâ pauperis.*
12. That the suggestions as to treating deeds or agreements for separation as at an end, and as to setting such documents aside, be adopted.
13. That we do not recommend any change in the law permitting the inter-marriage of guilty parties.
14. That the suggestion with regard to preventing abuses in connection with Jewish divorces be adopted.

VIII.—*Under Part XVII.*

That the suggestions made by us in Part XVII. with regard to limiting publication of reports of divorce and other matrimonial cases be adopted, those provisions being:—

1. That a judge hearing a case should be expressly empowered by Statute to close the court for the whole or part of a case, if the interests of decency, morality, humanity, or justice so require.
2. That power be given to a judge to order in court, during the conduct of a case or at its conclusion, that portions of the evidence, correspondence, documents, or speeches, which are unsuitable for publication in the interests of decency or morality, must not be reported or published.
3. That there should be no publication of a report of a case till after the case is finished.
4. That publication of pictorial representations, whether produced from photographs, drawings, or otherwise, of parties, witnesses, or others concerned in divorce and matrimonial cases should be prohibited.
5. That any publication, which infringes the provisions made for giving effect to these suggestions, should render the person infringing liable for contempt of court.

IX.—*Under Part XVIII.*

That the protecting clauses in the Act of 1857 with regard to the position of the clergy of the Church of England should be extended, if the further grounds for divorce above recommended be added.

CONSPECTUS.

529. The recommendations made in this Report and summarised above, may be conveniently grouped under the following heads, which show in general terms what is proposed:—

(1) The decentralization of sittings for the hearing of divorce and matrimonial cases to an extent sufficient to enable persons of limited means to have their cases heard by the High Court locally.
(2) The abolition of the powers of Courts of Summary Jurisdiction to make orders for the permanent separation of married persons and the introduction of amendments with regard to their powers, procedure, and practice.
(3) The placing of men and women on an equal footing with regard to grounds for divorce.
(4) The addition of five grounds for divorce which are generally recognised as in fact putting an end to married life.
(5) The addition of grounds for obtaining decrees of nullity of marriage in certain cases of unfitness for marriage.
(6) The introduction of other amendments of the present law, procedure, and practice in a number of details.
(7) The making of certain provisions with regard to the publication of reports of divorce and matrimonial cases.
(8) The extension of the protecting clauses in the Act of 1857 with regard to the position of the clergy of the Church of England, if the further grounds for divorce above recommended be added.

530. We desire to express our recognition of the services rendered to the Commission by the Secretary (the Hon. Henry Gorell Barnes) and the Assistant Secretary (J. E. G. de Montmorency, Esq.). The arrangements made by the Secretary for the sittings of the Commissioners and the attendance of the large number of witnesses were most satisfactory, and enabled the proceedings to continue without any inconvenience or waste of time. The assistance of both Secretaries in the preparation of the Report and other matters has been invaluable. The summary of the laws relating to divorce in foreign countries and British Dominions, prepared by the Secretary, has been extremely useful, and the memorandum on the history of the law of divorce prepared by the Assistant Secretary has been of much assistance to us, and we think will prove of general interest.

We also wish to express our thanks to the Clerk to the Commission (Mrs. Billinghurst) for the unremitting attention and care she has shown in the performance of her duties, which have been very onerous. Miss Stewart's careful indexes will facilitate reference to the Evidence and to this Report.

All which we humbly submit for Your Majesty's gracious consideration.

GORELL (*Chairman.*)
FRANCES BALFOUR.
THOMAS BURT.
CHARLES J. GUTHRIE.
FREDERICK TREVES.
H. TINDAL-ATKINSON.*
MAY TENNANT.†
EDGAR BRIERLEY.
J. A. SPENDER.‡

2nd November 1912.

H. GORELL BARNES (*Secretary.*)

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* Subject to note on p. 167. † Subject to note on p. 169. ‡ Subject to note on p. 170.

NOTE by His Honour Judge TINDAL ATKINSON.

I fully concur in the suggestion contained in this Report that the court appointed to try divorce cases should be the High Court, in courts presided over by certain county court judges put into commission for such purpose, or, if necessary, other Commissioners travelling through appointed circuits for the trial of matrimonial causes.

I believe that procedure will give the necessary facilities to enable the poorer classes to obtain relief provided the Commissioners hold their sittings in a sufficient number of towns so that the courts are really accessible to and available for these classes in all parts of the country.

In agreeing to this suggestion I am materially influenced by the consideration that it effectually meets the objection made by a considerable number of persons, many of them very influential, who, rightly regarding the marriage contract as being of the most solemn character not only affecting the parties to it but the welfare of the State, are of opinion that questions affecting the dissolution of marriage should be tried and decided in the Supreme Court.

I desire, however, to record my opinion that should the Legislature at any time decide to confer upon the county courts this jurisdiction it will be exercised and justice administered with complete satisfaction. I think many of the eminent witnesses who gave evidence against this jurisdiction being given to the county courts have in their minds the position of these courts 25–40 years ago.

Judge Woodfall declared in his evidence "that the description of the county court "as a poor man's court is erroneous. The county court is a poor man's court inas- "much as the poor man goes where the thing is cheapest, and as the costs are less "than in the High Court persons go there, but the county court has changed in the "last 25 years, and to label it the poor man's court is quite misleading. In the last "25 or 30 years some 130 Acts of Parliament have thrown upon the county court the "most important jurisdiction. Very large and important questions are litigated "there constantly." I entirely agree with this statement of the learned judge.

There is a very strong body of evidence in favour of this jurisdiction being conferred upon the county courts including that of the Right Honourable Sir David Brynmor Jones, K.C., M.P., the late Sir George Lewis, the President of the Law Incorporated Societies, Law Societies from different parts of the country, and many other important witnesses familiar with the present working of the county courts and what those courts are capable of doing.

These courts offer substantial facilities (1) in regard to locality, (2) in that they are worked by registries affording ample scope for administrative proceedings, and (3) the poorer classes are familiar with and know how to obtain access to them.

As regards the danger of collusion and matters in which the King's Proctor might be required to intervene, the Right Honourable Earl of Desart, who acted for a number of years as King's Proctor, said in answer to question 15,906, "I do not think there is "any objection to county courts from the King's Proctor's point of view."

Another objection raised that divorce jurisdiction in the county courts will interfere with and prevent the proper carrying out of the primary work of these courts. I do not think this objection is well founded. Judge Austin of the Bristol Court and Judge Ruegg, who sits at Birmingham, were both of opinion that they could find time for the trial of divorce cases. The business of these two circuits is heavy, and they afford a very good test of whether the county courts generally are capable of disposing of divorce work.

No doubt the present procedure of and the distribution of the work and sittings in the county courts require reform. The County Court Bill now before Parliament contains ample provisions to effect this necessary reform, but even if this Bill fails to become law the bringing of the County Court Bench to its full complement of 60 judges provided by the County Court Act, 1888 (55 being only appointed at present), would enable these courts satisfactorily to dispose of such divorce causes which might be brought in them.

Judge Sir W. Lucius Selfe, who is opposed to divorce jurisdiction being conferred on the county courts, expressed his opinion that the appointment of these five additional judges would be sufficient for the purpose (*see* questions 2373 and 2374). It would, however, only be necessary to resort to this expedient if it were found that divorce jurisdiction, as exercised in the county courts, acted to the prejudice of the general business of these courts.

In my opinion the statement in paragraph 106 of the Report given as a reason why the county courts should not have jurisdiction in divorce cases, viz. : " that the " recovery of small debts . . still forms a considerable part of the work " of the county courts may be misleading. The debts recoverable in the county courts extend to 100*l*. The statement, moreover, may imply that this duty is performed by the judges; this is erroneous. This part of the county court work falls almost exclusively upon the registrars. Only in a very small percentage of the debts sued for is any defence raised, and these cases are taken by the judges unless the parties consent (which they frequently do) to actions for debt not exceeding 2*l*. being disposed of by the registrars.

I entertain a very strong opinion that in cases of urgency as to custody of children arising in divorce proceedings and the enforcement of orders as to custody if the district commissioner is not able to hear the application he might be authorised to empower the county court judge of the district to deal with and determine it subject to a right of appeal.

The district commissioner may not be accessible in cases of urgency, and it is of the utmost importance that children should be removed, as soon as possible, from the influence of an immoral or brutal parent. Lord Mersey, the late President of the Probate and Divorce Division (Qs. 1321–3), referring to the custody of children said "that the county court judges should have power to enforce orders made by the High Court."

I have recommended the delegation being made to a county court judge as the right of custody may be contested and orders made by commissioners may require to be enforced immediately. My opinion is that amongst local tribunals the county court judges are most competent to deal with these matters. The county courts also possess some powers as to the custody of children under the Guardianship of Infants Act, 1886. However, if any substantial reason can be shown why in divorce proceedings the county courts ought not to exercise this jurisdiction I can see no objection to the delegation being made to a justice of the peace.

H. TINDAL-ATKINSON.

Note by Mrs. H. J. Tennant.

I have signed the Majority Report, notwithstanding a very real anxiety as to the effect of increasing the facilities for Divorce, and of enlarging its permissible causes. And I have done so mainly because I believe that Separation Orders, the general alternative offered to Divorce, work badly in working-class homes, and on the whole make for an increase rather than for a diminution of immorality. We have to consider housing conditions and economic circumstances which often do not make for clean or wholesome ways of life, and, where the relief offered by Separation is not only inadequate, but positively mischievous.

I do not ignore the fact that to extend the causes of Divorce or increase the facilities for its relief may in certain directions weaken the general regard for the covenant of marriage. But our great objective obviously is to secure as large an opportunity as possible for decent life, and as far as possible to exclude its opposite, limiting as much as we can—to name one definite plain evil—the number of illegitimate children. Where Divorce makes for that objective, on that side lies the balance of good. Where desertion or infidelity or cruelty have imposed an unduly heavy burden upon wife or husband, a situation is created, which in practice results commonly, not in a restriction, but in an increase of infidelity. Accordingly, where the cause is sufficiently grave to demand the relief of Separation, I believe that the alternative of Divorce should be permitted; and I support the recommendation that desertion and cruelty should henceforth each be regarded as sufficient grounds of Divorce. Indeed I feel desertion to be an even greater cause than infidelity—its general concomitant as it happens—since it nullifies and defeats all the purposes of marriage.

I support the recommendation that insanity be made a cause of Divorce, because I feel it to be unlike any other illness or affliction, but I feel that the measure of relief to the sane partner is inadequate if it is applied only where the other is declared to be incurably insane. In my opinion, the wife of the intermittently insane and intermittently released husband demands just that protection which is afforded, automatically, to the wife of the permanently insane husband by the fact of his confinement. In the latter case a woman may not obtain relief under the recommendations made in paragraphs 290–2, until the insane spouse shall have been continuously confined for a period of not less than five years. But at least she is protected in the meanwhile against the calamity of bearing a child for whose sanity and future she could have little hope. The wife of a husband intermittently sane, and in that condition released, has no such protection. This, I am satisfied, is a matter of pressing anxiety to many working women, and I hope relief may be found in amendment of the Lunacy Laws since the only alternatives, Separation or Divorce, though protecting the individual wife would almost certainly add to the number of defective illegitimate children and, incidentally, multiply the burdens of the State.

I am unable to support the recommendation that habitual drunkenness should be a cause of Divorce, even with the safeguards suggested in paragraphs 313–4. I admit the force of the contention that drunkenness may be such, and so frequent, as to make married life intolerable. But where such drunkenness is actually approved dangerous to others its danger is sufficiently met by the recommendation as to cruelty (paragraph 261). I feel this trouble to be one in which the sober partner can and ought to help at the early stages especially, in a very great degree, and that there should be an no incentive, in these stages, to abandon the victim to his or her declension. Considerations of a wider nature demand not so much the alleviation of the sober partner as the salvation of the drunken. The State looses by every man or woman so disabled, and it is to its interest to avert the loss to itself rather than merely to alleviate its incidence to the individual. I venture therefore to indicate that, in my opinion, the State should endeavour, in the first place, to secure the rescue of the incipient drunkard.

I am unable to support the recommendation in paragraph 322, that a commuted death sentence should be a cause of Divorce.

I am unable to support the recommendation (paragraph 392) that the Court should have power, on the application of the respondent, to grant a decree of Divorce where only a decree of Separation is desired. I cannot feel that the guilty person should have any power to impose upon the innocent a remedy against which he or she may have conscientious scruples. And I cannot ignore the possibility that the existence of such a power might deter the innocent person from seeking a relief desirable alike on personal grounds and in the wider interests of the children of the marriage.

MAY TENNANT.

Note by Mr. J. A. Spender.

I desire to submit a few notes adding to or qualifying the Majority Report with which otherwise I am in complete agreement.

(1) *Desertion.*—I am in favour of making the period of desertion as a ground for divorce *two* years instead of *three*, as proposed in the report.

(2) *Imprisonment.*—It does not seem to me worth while to make imprisonment a ground for divorce merely for the sake of meeting the few cases of commuted death-sentences. I am in favour of making all sentences of five years and upwards a ground for divorce

(3) *Separation.*—In addition to the power which it is proposed to give the Court to make a decree of divorce, on the application of a respondent against whom a decree of separation is asked for, I am in favour of giving such respondent the right, on application to the Court, of having a decree of separation converted into a decree of divorce after the lapse of two years.

(4) *The Publication of Reports.*—In assenting to the proposal that the "inherent jurisdiction," which the Courts now claim, of hearing cases *in camerâ* should be made statutory, I attach the utmost importance to the definition and limitation of this jurisdiction by Statute, that the Courts should not slip into the practice of using it for the convenience of parties who desire to avoid publicity in cases presenting no exceptional features. The recommendation that the Judge should be required to state his ground for closing the Court is, in my view, an essential safeguard, and if the grounds are so defined by Statute that the parties will not desire to have recourse to them unnecessarily, I do not think that any unforeseen extension of this power need be apprehended. In any case, since the doctrine of an "inherent jurisdiction" to close the Court has been set up, and is implied in the present practice of the Court in nullity cases, it is desirable that it should be defined by Statute.

I wish to add, however, that in any dealing with this subject it will be incumbent on the Legislature to take careful steps to guard the interests of the parties, which seem to me to be seriously threatened by the decision given in the Court of Appeal (July 6, 1912) in the case of Morgan *v.* Scott. In that case it was decided by a majority of four Judges to two that a lady who had obtained a transcript of the shorthand-writer's notes of a case heard *in camerâ* and forwarded it to members of her family was guilty of contempt of Court. In dissenting from this judgment, Lord Justice Fletcher Moulton described it as "a serious encroachment upon personal liberty," and energetically protested against the claim of the Court to "control the personal "acts of litigants after the conclusion of the suit, except to enforce the relief granted." Apart from the important legal principle here at issue, it seems to me clear that, as the Lord Justice contends, the most serious injustice may be done to the parties, if at the conclusion of a case heard *in camerâ* they are to be denied access to the records of the Court or prevented from communicating them to friends, relations, and others, whose good opinion may be of importance to them. It is, therefore, in my view, of the highest importance that the Legislature should take care that restrictions on publicity, which may be deemed necessary in the interests of public decency, are not liable to be interpreted as a rule of secrecy which may be imposed on the parties by the Court, when the proceedings are over.

The Judgment in this case was delivered too late for its consideration by the Commissioners as a whole, and it may yet be reversed on appeal to the House of Lords; but it raises a question of such obvious relevance to a portion of our report that I feel it necessary to add this note, in case the assumption holds that the law is what the Court of Appeal has decided it to be.

As regards publicity in general, I rely on the recommendation that there should be no reports in the public press, until a case is concluded, to correct the chief part of the abuses alleged against reporting, as at present practised. This, I hope, will discourage long and detailed reports running, like a serial story, from day to day, with the accompanying bills, headlines, and sensational incidents. On the other hand, all that is valuable in publicity will remain unimpaired, and the public supervision of the Courts which will be more and not less important if the recommendations made by the majority of the Commissioners are adopted, will continue as hitherto.

J. A. SPENDER.

MINORITY REPORT

BY

HIS GRACE THE LORD ARCHBISHOP OF YORK,
SIR WILLIAM R. ANSON, BART., M.P., AND
SIR LEWIS T. DIBDIN, D.C.L.

His late Majesty King Edward VII. having been pleased to issue a Commission directing certain persons (including us the undersigned Commissioners) to inquire into the present state of the law and the administration thereof in Divorce and Matrimonial Causes, and Applications for Separation Orders, especially with regard to the position of the poorer classes in relation thereto, and the subject of the publication of reports of such causes and applications, and to report whether any and what amendments should be made in such law, or the administration thereof, or with regard to the publication of such reports, and Your Majesty having been pleased to issue a Warrant under Your Majesty's Royal Sign Manual, by which, notwithstanding the late demise of the Crown, Your Majesty authorised the members of the said Commission to continue their labours, and did thereby in every essential particular ratify and confirm the terms of the said Commission, we have inquired into the said subjects, and now humbly present our Report to Your Majesty.

We regret that as we do not concur in the most important of the recommendations made by our colleagues we are unable to sign the Report presented by them, although we are glad to find ourselves in agreement with many of its contents on other matters.

MARRIAGE AND THE MARRIAGE CONTRACT.

In dealing with the very important subjects committed to our consideration it is well to remember that we use the word "marriage" to denote sometimes the married state, and sometimes the act of being married. In the former sense it means the condition resulting from the relation between husband and wife. In England this relation is recognised by law to be monogamous, so that the special rights and duties of each spouse with regard to the other are shared by no one else; and, further, the law contemplates that it will be life-long, that is to say, will normally endure during the joint lives of the parties. In its other sense, of the act by which the status of marriage is acquired, marriage is the making of a contract by which a man and woman consent to become, then and there, husband and wife. The essence of the marriage contract is this consent, but in England it can only be validly given by persons qualified by law to marry each other, and the contract must be entered into under certain prescribed conditions of prior notice, publicity, and official sanction. Marriages in England must either be celebrated according to the rites of the Church of England, or they must be celebrated in accordance with the Civil Marriage Acts which provide machinery under which Nonconformist as well as purely civil marriages are celebrated. The special arrangements long authorised by law for Quaker and Jewish marriages are safeguarded by these Acts and may be passed over. About 61 per cent. of marriages in England are solemnised in Church. In all these cases the promise publicly made by each of the spouses to the other is: "I take thee "to be my wedded wife [or husband] to have and to hold from this day forward for "better for worse, for richer for poorer, in sickness and in health, to love [and to] "cherish [and to obey] till death us do part." In other words, they promise to maintain the marriage relation during their joint lives, notwithstanding the vicissitudes of health, fortune, and other circumstances. In a marriage under the Civil Marriage Acts the corresponding undertaking is put more briefly thus: "I do take "thee to be my wife [or husband]." It may, we think, be safely assumed that the latter form is not intended to denote any less far-reaching acknowledgment of reciprocal obligation than the former expresses in terms. It is rather that the very words "husband" and "wife" stand for all the rest. It should be added that purely civil marriages, without any religious ceremony, amount to about 20·5 per cent. only of the total number of marriages in a year.

72nd Annual Report of Registrar-General (1909), published 1911 (Cd. 5485), p. xxiv.

Idem.

The State is sometimes called the third party to the marriage contract because it not only lays down the conditions which must be satisfied both as to personal qualifications, and as to the incidents of the contract, but it also gives to the union of those who have been legally married special and definite recognition. The State protects family life, it defines and defends the authority of parents over their children, the rights of children to the care of their parents, and to a certain limited extent the obligations of husband and wife towards each other. But apart from any share which the State can claim in a marriage contract by reason of what it confers, it has a concern of its own in the peace of the community, the welfare of the family, the rearing of healthy children, and the training of good citizens, which renders it imperative that the making and the breaking of marriage contracts should be treated as matters of public importance touching the commonwealth itself, and not as merely private transactions only affecting the parties. The permanence of the nuptial tie is all but universally admitted to be of advantage to the State. "The preservation "of that union, so long as it can be secured, is manifestly essential to the best "interests of society." The "advantage to the State" and "the interests of society" are thus brought into emphatic prominence at the outset of this Report because they indicate what, in our opinion, is the only correct point of view from which a Royal Commission can regard the subject of Divorce. In any discussion upon marriage and the dissolution of marriage it is natural that much should be heard of what is called the ecclesiastical view. The great extent to which during many centuries the Christian States of the West left these matters to be dealt with by the Church and its Courts renders this inevitable. But the meaning of this condition of things must not be misunderstood. The Church of England does not, and never did, claim that non-Christians are subject to its own rules as to marriage and its dissolution, although the State might, and in the matter of Divorce did, adopt ecclesiastical rules and enforce their observance on all subjects indiscriminately. The State definitely abandoned this attitude when it passed the Divorce Act of 1857, by which a new law of Divorce was created to be administered not in the Church Courts, but in a new civil court set up by the Statute. Under that Act adultery, and adultery alone, was made a ground for dissolution of marriage. This offence was said to be "so gross a violation of the marriage contract and so utter a destruction of all the "objects for which the contract was made" as to justify its being so treated. Whatever opinion may be entertained of its adequacy as a reason for divorce, we believe it is true to say that the conscience of mankind has always recognised adultery, as a matrimonial offence, to stand alone in the finality of its effect. Adultery breaks the tie of married life in a sense and with a completeness which can be predicated of no other wrongdoing. For the peculiarity of adultery is that it is a wilful and deliberate transfer to another person of all that is involved in the physical union of husband and wife, which has universally been regarded as the completion and consummation of marriage. The question submitted to the present Royal Commission is, in effect, whether the Statute law made by Parliament in 1857 needs reconsideration either as to the grounds of divorce, or as to courts. The nation more emphatically than in 1857 now includes persons of every variety of creed and of no creed, all of whom have a right to be considered by Parliament in any amendment of the English Divorce Law, and it seems to us to follow that in framing our Report we are bound to treat the question on the broad grounds of the real interests of the whole community and with reference to the actual conditions of our day. We do not therefore express an opinion as to whether the action of the Legislature in 1857 was wise or unwise or as to whether the welfare of the nation has been promoted by the Divorce statute of that year. The repeal of the existing Divorce Acts, even if desirable, is not practicable. It is in entire agreement with this view that, while we do not pretend that non-Christian marriages are necessarily governed by the rules of the Christian society made for Christian marriages, we should claim from that great portion of the nation which professes allegiance to the Christian Faith a due regard for our Lord's teaching as representing what in His view is best for the world.

First Report of Royal Commission on Divorce (1853), p. 4.

Idem, p. 16.

What then is for the public good in England with regard to divorce? Is it in the true interests of the nation that the present law under which marriage once validly contracted is, except for adultery, indissoluble should be abandoned? Very early in our inquiry it became evident that true answers to these questions cannot be given without due appreciation of many different matters, some making for and some against change. It is only on a balance of these conflicting considerations that we can hope to reach a right conclusion.

The Lessons of Experience.

The Dominions. France. The United States.

It is reasonable in the first instance to ask what the experience of other countries can teach us. In the Roman Empire there grew up a system of easy divorce, dreaded by statesmen, but, once established, found impossible to check. As to its result we are told that "throughout the Roman world there can be no doubt that this dissolution "of those bonds which unite the family was the corroding plague of Roman society." To come to our own day, it cannot be denied that during the last half century there has been almost throughout the civilised world an enlargement of the law of Divorce, and a multiplication of the grounds for dissolution of marriage. Most European countries, the great colonial dependencies in Australia, New Zealand, and South Africa, and the United States of America have to a greater or less extent provided legal facilities for dissolving marriage on the grounds which have commended themselves to the majority of our colleagues, viz., desertion, cruelty, insanity, drunkenness, and conviction for crime. The result has been so marked an increase in the number of divorces as to cause, at any rate in some countries, grave apprehension and alarm. Thus in France, since 1884, Divorce may be obtained on the ground of adultery, violence endangering life, cruelty, penal servitude, or grave indignities—the last ground being of elastic definition, including desertion and habitual drunkenness. The growth of divorce under this state of the law has been such that between 1886 and 1906 the number of Divorce Decrees has increased from 2,950 to 10,573 per annum. Since 1906 the number has probably further increased. A witness, M. Henri Mesnil, an eminent French avocat, and a Doctor of Law, informed us that the great increase in the number of divorces was beginning to cause anxiety to the French Government, and that it has generally been thought that divorce was granted too easily. He was disposed to attribute this increase to the vagueness of the term "grave indignities," which admits of extension of the grounds of divorce at the discretion of the judges dealing with these cases.

Milman's History of Latin Xtv, vol ii., p. 22 (ed. 1883).

See post.

Special Report, U.S.A. Government, Marriage and Divorce, vol. ii., p. 357.

Mesnil, 42,968 42,985, 42,987, 43,018.

In the United States of America the excessive prevalence of divorce is notorious, but the actual facts are not perhaps so well known in England as they ought to be. Marriages were dissolved in America by quasi-legislative Acts before the Declaration of Independence. Divorce laws began to be made immediately after that event, with the result that causes of divorce multiplied and divorce by judicial process was systematised. The main grounds of divorce existing to-day have been in operation for a long time. Indeed, the tendency during the last 20 years has been, on the whole, to restrict rather than to extend facilities for divorce. Each of the 50 States and Territories has its own Divorce Law, with the one exception of South Carolina, which, after a few years' experience of its effects, abolished divorce in 1878, with the result, according to the evidence before the Commission, that conjugal fidelity is greater and desertion less frequent in South Carolina than in other States. The opinion of those on the spot, elicited by inquiry for the information of the Commission, was as follows: "We are satisfied that the inhabitants of South Carolina, generally "speaking, are satisfied with the law on Divorce in this state as it now stands, and "that at the present time it could not be repealed." With regard to the other 49 States and Territories, adultery is a ground of divorce everywhere, and desertion and cruelty in varying forms almost everywhere. In 40 States habitual drunkenness, and in 41 States conviction of grave crime are grounds of divorce. In only five or six States incurable insanity appears to be now admitted as a ground. It formerly prevailed much more widely, but has been abrogated in many States. In addition to these six causes which it is the desire of those who have signed the Majority Report to see adopted in England, neglect to provide for the family is a good cause of divorce of the husband by the wife in many States, and special grounds, *e.g.*, vagrancy, intolerable indignity, attempted murder of a spouse, and joining a religious sect which prohibits the marriage relation are added here and there. Contrary to a widespread impression in England, no State allows divorce for incompatibility except the Western State of Washington, where divorce may be granted whenever the judge is satisfied that for any cause the parties can no longer live together. The most frequent ground for divorce in the United States is said to be desertion. A few years ago, at the suggestion of President Roosevelt, a Divorce Congress composed of Delegates from 40 States was convened. After full discussion the Congress in 1906 agreed to a "uniform Divorce Law," which was recommended to the various States and Territories for adoption by each separately. It would seem that this remarkable

Crane, 16,344.

Crane, 16,319.
Crane, 16,326.
Address, Resolution, Uniform Law adopted by National Congress on Uniform Divorce Law.

movement is likely to have great and permanent results. The Uniform Divorce Law would practically reduce the grounds of divorce to the six causes above mentioned, with the exception of lunacy, which is definitely omitted. It also deals with the general subject of the jurisdiction of the Courts of a State to grant Divorce Decrees, and with the closely allied subject of the recognition to be given in one State to decrees obtained in another.

Address, p. 12.

The Congress appended to their proposals an Address which contains these significant words: "It is fully realised that the new law proposed is not a complete "or ideal uniform divorce law, but that it is only the best law in that direction which "it now seems practicable to obtain." In other words, the Congress was confronted by the almost insuperable difficulty of the withdrawal of licence once given, the retracing of steps once taken in the direction of an early dissolution of the marriage tie.

The general position, therefore, in the United States is that for many years past there has been in operation a system not very unlike—so far as grounds of divorce are concerned—that which the Report of the majority would impose on England, that experience of its working has produced a marked and growing desire for restriction and limitation, but that to give practical effect to this desire is found exceedingly hard in the face of the laxity to which the nation has become used.

When we turn from the Divorce Law of America to consider what has been the result of its working, we are confronted by a state of things so grave and menacing that we cannot be surprised at the terms in which it is described by those who know most about it. Mr. Roosevelt states as "one of the most unpleasant and dangerous "features of our American life" "the loosening of the marital tie among old native "American families." It appears from the United States Government statistics that whereas in 1867 there were 9,937 divorces, in 1900 there were 55,751, the rate having risen from 27 per 100,000 population to 73 (or omitting limited divorce, 72). To realise the magnitude of this rate it should be borne in mind that the corresponding rate in England and Wales for 1900 was 2 per 100,000 population. By 1906 the number of divorces in the United States had risen to 72,062, and the rate per 100,000 to 86. Divorces are, as might be expected, not evenly distributed over the United States. The rate is highest in the Western and lowest in the Atlantic States. The growth of divorce in the country as a whole has continued since 1906, and is still proceeding. It is said: "The divorce rate, like the velocity of a falling body, is "constantly increasing." The Census Report states: "The enormous increase in "divorce revealed by these statistics naturally raises the question how far this "increase is to be attributed to growth in population. . . . . The rate of "increase in divorce is far greater than the rate of increase in population."

Census Report, p. 4.

Census Report, p. 19.

Census Report, p. 67.

Idem, pp. 12, 13.

The outstanding fact is that in the case of the great English-speaking American people, which has, and for many years has had, a Divorce Law largely similar to that which our colleagues would see established in this country, the number of divorces has grown rapidly year by year. It has reached a figure which, in proportion to population, is now considerably more than double that of the number of divorces in any other country of the world except Japan (where one in every six marriages is dissolved). Witnesses have given their own views of the causes of this ominous development. It is said, no doubt with justice, that the number and varying capacity of the judges who exercise divorce jurisdiction in the States tends to render divorce too easy. It is brought to "every man's door," and the subject is not regarded seriously enough. Another cause is said to be the lightness and frivolity with which marriage is treated. It is obvious that the multiplication of facilities for dissolving an unsuccessful marriage will not tend to diminish the recklessness with which marriage is contracted. This was well put by an American witness whose general point of view was favourable to divorce as a necessary evil. He admitted that "there would probably be in the "minds of some persons a cheapening effect upon marriage if they calculated that "in the act of marriage, or in the contracting of a union, there would be possibly "some way out of it."

Census Report, p. 485.

Crane, 16,326, 16,435–8.

Crane, 16,365.

Crane, 16,432.

So marked has been the decay of home life and family ties in modern times in America that a "National League for the Protection of the Family" was formed about 30 years ago, the special aim of which is "the improvement of public "sentiment and legislation, to protect the institution of the family, especially as "affected by existing evils relating to marriage and divorce." The corresponding secretary of the league, Dr. Samuel Dike, whose unique knowledge of the subject cannot be questioned, writes as follows: "However humane in intent divorce may be, "whatever perils of incontinence without it, we find no historical ground for the

Report for 1910.

Report of the Committee on the Family, p. 9.

" contention that easy divorce has increased social purity or happiness, but that rest-
" lessness, sexual laxity, temptation to other attachments, corruption of home atmo-
" sphere, and selfishness instead of public well-being cause or accompany this social
" peril."

The impression at one time common, that the deplorable frequency of divorce in America was largely the result of the independence of each other of the various States, and the ease with which immigrants coming either from other States, or from Europe, could avail themselves of the facile system of a particular State, has turned out to be ill-founded. The Census Report, after giving statistics, states: " Although " these figures do not prove that no persons migrate for the sake of obtaining a " divorce, yet they show that migrating for that purpose is by no means the usual " and ordinary practice." Dr. Samuel Dike says that the Report " has shown that " migration for easy divorce is confined within very small limits both as to numbers " granted and the places where such divorces are obtained."

Census Report, p. 34.
Barratt, 16,575–9, 16,592.
Lawson, 23,834–6.
Report for 1909 of National League, p. 8.

After making all allowances for differences of national temperament, climate, and circumstances between England and the United States, we are bound to recognise that the two countries have too much in common to make it probable that if we in England adopt what are substantially the American grounds for divorce, we shall escape the grave disasters which have admittedly followed their adoption in the United States. The unwisdom of neglecting so conspicuous an object lesson is emphasised by the fact, which apparently is admitted on all hands, that now that the present American Divorce Law has had time to take root and bear its inevitable fruit, no mere legislative restrictions, even if practicable, will stem the tide of divorce. The slight improvements of late years in American Divorce Law, to which we have already referred, " have been less on the legal grounds for divorce than on restrictions " on their abuse." Dr. Dike, commenting on the Census Report, says: it " seems to " make it fairly clear that legal restrictions, though reducing other evils, have less " effect in lessening the number of divorces than many hoped. In some instances " such restrictions seem to reduce the divorce rate for three or four years, and then " divorces apparently return to nearly or quite their old rate of increase." It may be, as was insisted by one witness, that divorce is growing, not only in America, but almost all over the world, and that this development is indicative of some widespread social movement existing behind the divorce laws of the various countries which have made them. But that view of the inevitableness of divorce extension, however impressive it may sound, has no force with regard to England, except so far as public opinion in this country can be shown to favour divorce extension. For it is public opinion, and not fate, which will decide. We shall deal with the question of a general demand in England for greater facilities for divorce presently. Meanwhile, it is irrelevant to the purpose for which we have examined the precedent of the United States. We are considering not what is inevitable, but what is advisable. With that aim before us we cannot but be profoundly influenced by the example of America governed by Divorce Laws the working of which has, as a matter of fact, been followed by a state of things regarded by most Americans with profound regret and alarm, but an effective improvement of which no one discerns how to effect.

Special issue of the National League for 1909 (No. 11), p. 17.
National League Report, 1909, p. 9
Barratt, 16,714, 16,821.

It would serve no useful purpose to describe in this Report all the various Divorce Laws of foreign countries and British colonies. Full information as to them is given or referred to in the evidence. But in view of the extension of grounds of divorce in most parts of the world, it is significant that no witness has been able to tell us of a country where, as the result of greater facilities for the dissolution of marriage, public morality has been promoted, the ties of family, of husband and wife, of parents and children have been strengthened and home life has been made purer and more settled. The experience of other countries, and especially of America, certainly does not encourage the hope that the public good of this nation will be promoted by the enactment of extended grounds of divorce.

Barnes, 3–6 and analysis, vol. 1, p. 4–10, 34,943–41,352, and Appendix XXII.
Bluebooks: No. (1894), C. 7391; No. 2 (1903), C. 1468.
H.C., 144, 145 (June 1894).
H.C. 323, 324 (August 1894).
Cd. 1785 (Octobe 1903).
Cd. 5993 (December 1911)
U.S.A. Census Report, vol. ii. pp. 264–390.

The English Demand for extended Grounds of Divorce.

It is necessary next to examine the reality and the strength of the alleged demand for the adoption of additional causes of divorce. It cannot be questioned that in a democratic country like ours public opinion must prevail; so that if it no longer supports the present comparative strictness of the marriage law and demands its abrogation, the State is bound to comply with that demand. Further, the State must take into account the actual facts of social life and shape its policy accordingly. If, therefore, it were proved that the restriction of the existing law of divorce was

responsible for widespread immorality, which the introduction of additional grounds of divorce would remedy, the State would have strong reasons for making that change.

The additional causes for divorce which have approved themselves to the majority of the Commissioners are (i) desertion for three years, (ii) incurable insanity after five years, (iii) penal servitude for life where there has been a death sentence commuted, (iv) cruelty, and (v) habitual drunkenness. The mass of the evidence given before the Commission and the variety of topics dealt with by the witnesses are so great that the outcome on any particular point is not always easy to grasp distinctly and separately. The danger is of acquiring nothing except a general impression made by the evidence vaguely regarded as a whole. Further, we must always be on our guard lest the sympathy which cases of individual hardship naturally and rightly arouse should tend to narrow our outlook and prevent a comprehensive view of the whole situation as it affects the welfare of the community. The expression "further "facilities for divorce" denotes two quite different things, both of which are dealt with by the witnesses, viz., easier means of using the present law of divorce, and an alteration of the law by the addition of fresh grounds of divorce. The one relates to cheaper procedure and more numerous and different courts, and will be considered at a later stage of this Report. The other is the matter before us at the moment.

Atkinson, 7084. Halkett, 7309–13, 7174, 7181. Neville, 6898, 6915. Smith, 7608. Goldstone, 20,860–1. Barnett, 19,224, 19,225, 19,235–7, 19,134. Bladen, 18,135–8. Fitzsimmons, 19,466. Holmes, Charles, 18,361–2, 18,408–11, 18,451–3. Holmes, Robert, 17,986, 18,007. Lewis, 19,872–5. Lightfoot, 18,505, 18,506, 18,515, 18,516. Massey, 19,408–11. Mundin, 18,778–85, 18,790. Palin, 18,198, 18,200, 18,205. Pike, 18,617, 18,622–4. Wright, 19,326. (*a*)Parr, 36,606–8. (*b*)Silcock, 22,287–90. (*c*)Hubbard, 16,886–91, 17,052–4. (*d*)Steinthal, 17,066, 17,071–84, 17,089, 17,096, 17,105, 17,131. Savile, 39,556–9. (*e*)Jones, 20,932, 20,972–6. Ditchfield, 20,165–6. Church, 17,139–47, 17,169–70.

The evidence, so far from showing any great or general demand on the part of the poorer classes for divorce on other grounds besides that of misconduct, very clearly proves the absence of any such demand. Most of the witnesses actually in contact with the poor, with practical knowledge of their affairs, are emphatic upon this point. Stipendiary police magistrates at Leeds, Hull, South Staffordshire, and Grimsby deny any real demand, and, more significant still, those, *e.g.*, the magistrates at East Ham, Tower Bridge, Bow Street, and Birmingham, who are personally in favour of some extension of the divorce law, do not assert that the people desire it. Police court missionaries from a great number of centres in London and the Provinces almost without exception testified either that there was no demand, or that it was of very limited extent. Mr. Parr (*a*), the Director of the National Society for the Prevention of Cruelty to Children, although in favour of enlargement of the grounds of divorce, admitted that even in his great experience he did not meet with a large number of applications for divorce. Mr. Silcock (*b*), the Chairman of the Council of Associated Societies for the Protection of Children, stated that there was no demand. Mrs. Evelyn Hubbard (*c*) and Mrs. Steinthal (*d*), representing the "Mothers' Union," produced a remarkable body of evidence. The Mothers' Union consists of 278,500 wives and mothers almost entirely of the working classes in England and Wales. The number of members, including those in Scotland, Ireland, and the colonies, is much larger. Any general demand by the poor for wider powers of divorce could not but be known to the members of such an organisation, and considering the vast dimensions of the union, the demand, if it existed, might reasonably be expected to make itself unmistakably audible. But on the contrary a number of meetings of branches of the Union have been held in different places at which resolutions hostile to any extension of the grounds of divorce have been passed unanimously or by great majorities. An aggregate of 85,491 votes of working mothers have been recorded. Reports from officials of the Union and of others working amongst the very poor were asked for, in answer to the question whether, if divorce were granted in cases of desertion, permanent lunacy, and long sentences of penal servitude, it would tend to lessen the sense of the binding character of the marriage tie amongst the poor. The great majority of those applied to replied in the affirmative, a few in the negative, and some considered that respect for the marriage tie scarcely existed amongst the very lowest class, and therefore could not be lessened. The Church of England Men's Society, numbering 100,000 members, 70 per cent. of whom are working men, sent up petitions signed by more than 15,000 men protesting against an extension of grounds of divorce and an even greater number desired the repeal of the Divorce Act of 1857. The evidence of clergymen of large working-class parishes is scanty, but, such as it is, it confirms that of the other witnesses.(*e*)

We infer from questions asked of some witnesses by the Chairman and some of our colleagues that opinions such as those reported by the representatives of the Mothers' Union are deemed of little value because some of those who collected those expressions of opinion themselves believe that marriage is indissoluble even on the ground of adultery. In the absence of any indication of a desire on the part of

these witnesses to deceive, or to convey an untruthful impression, we do not regard it as reasonable thus to dismiss as of no account so great a body of first-hand evidence. No doubt strong personal convictions affect a witness even unconsciously, and must be taken into account in weighing his or her evidence; but to discard such evidence as valueless would be unsafe; while it would be most unfair to regard the personal prepossessions of a witness as affecting the truthfulness of written statements given by other persons as the result of their experience and intimate personal knowledge.

On the other hand, evidence was produced before the Commission tending in an opposite direction which deserves attention. If personal bias were sufficient to put witnesses out of court, it might be thought to have an influence in the case of witnesses such as Miss Llewelyn Davies, the Secretary of the Women's Co-operative Guild, and Mrs. Barton, the wife of the Secretary of the Independent Labour Party at Sheffield, who advocated a facility of divorce hitherto unheard of in any civilised country. But in their case, too, while due allowance must be made for very evident and very strong prepossessions, the evidence must be reckoned with seriously.

Miss Davies attended as a representative of her guild, consisting of 520 branches and 25,897 members, nearly all "happily married" women of the working class. Davies, 36,965–6.
431 of these branches with 23,501 members were invited to express an opinion Davies, 36,975,
(*a*) as to equality of treatment of the sexes in the matter of divorce, and (*b*) as to 36,991.
cheap divorces, and by a great majority they declared in favour of both. At an
annual congress of members, held at Oxford in July 1910, attended by 680 delegates, Davies, 36,983–8.
the same questions were answered in the same way. No questions as to the
desirability of further grounds of divorce were submitted to either of these bodies,
because it was not thought "they had yet had sufficient study of the subject." But Davies, 37,059.
for the purpose of this Commission Miss Davies obtained the views of 124 individual
women whom she considered "especially intelligent," and who were members of a Davies, 36,974,
much more numerous class of past or present officials of the guild. 91 out of the 37,054–7.
124 were in favour of refusal to maintain wife and family being a ground of divorce. Davies, 36,993.
Of the 124, 98 thought insanity, 100 cruelty, 88 desertion for two years, and 75 a
separation order lasting three years should be grounds of divorce. Only 40 women Davies, 36,994–6.
were asked as to drunkenness, and of these 26 were in favour of its being a ground
for divorce. 82 of the 124 considered that "mutual consent" should be a ground.
As one of them put it: "This is the most reasonable ground for granting divorce." Davies, 36,998.
75 were of opinion that "serious incompatibility" was a proper cause for divorce.
Miss Davies explained that by "serious incompatibility" was meant "a serious Davies, 37,048–
"desire on the part of either of the parties not to live with the other," and that 51.
divorce ought to be "possible" although one partner (say the wife) does not wish
to separate, and although the desire of the husband to be freed is prompted by the
fact that he has transferred his affections to another woman. 86 out of the 124
women consulted considered that divorce should be allowed where both parties are
guilty. In fact, as one of the members put it: "more reason than ever." Davies, 36,998.

Miss Davies' evidence was supplemented by Mrs. Barton, who, on behalf of the Barton, 37,115.
Sheffield branch of the guild, expressed strong views as to incompatibility.
"Wherever there are two people joined together, and they find their whole interests
"are quite opposed to each other . . . . that should be a ground for divorce." She
instanced the case of a woman who was unwilling to bear children as one in which Barton, 37,109,
she ought to be entitled to claim a divorce, although the husband had committed no 37,147–50.
offence of any kind.

It is impossible to separate one portion of Miss Davies' and Mrs. Barton's evidence from the rest, and regarded as a whole it supports a view of the marriage contract and its dissolution which we believe would be generally rejected. At any rate it does not seem reasonable that we should be asked to accept as evidence of a great public demand the extreme opinions of a comparatively few individuals selected by a witness who shares those opinions.

The Commission has heard the evidence of a large number of witnesses with regard to separation orders granted by magistrates under the Summary Jurisdiction (Married Women) Act, 1895, and the Licensing Act, 1902. Its importance is very great upon the question we are now considering of the existence of a great public demand for enlarged grounds of divorce. These orders are obtained in cases of cruelty, neglect to maintain, and habitual drunkenness, against a husband, and in cases of habitual drunkenness only against a wife. The magistrate can make an order for maintenance or for separation or for both. Until the matter was dealt with Harriman *v.* Harriman (1909) P. 123.
by the Court of Appeal in a recent case, it was customary to include separation in all

Dodd *v.* Dodd (1906), P. 189

maintenance orders. The result was that a multitude of orders were made which were treated as equivalent to decrees of judicial separation, although they were in fact merely cases of a husband probably decamping, and certainly neglecting to maintain his wife and children, the object of the applicant in these cases being rather to enforce the husband's discharge of his duties than to terminate the marriage. There can be no doubt that this unfortunate practice of needlessly multiplying separation orders led to an exaggerated estimate of the real condition of things in England. Thus in the Civil Judicial Statistics for 1908, edited by Sir John Macdonell, C.B., he gives in a tabular form the number for each year of (*a*) Decrees of Divorce, (*b*) Decrees of Judicial Separation, (*c*) Separation Orders, adds them together, and, having thus obtained a very large total, observes: "In no other country, so far as "I know, are so many separations." It was commonly stated, on the strength of these statistics, that by means of separation orders a huge number of life-long divorces, without the possibility of re-marriage, had come into existence and was growing at the rate of 7,000 fresh cases every year. Sir John Macdonell indeed presented this view to the Commission: "A state of permanent separation is likely "to be unfavourable to morality; and it seems to me a great evil that thousands of "married couples are by magistrates' orders placed in this position. The figures run "into thousands. (*Chairman.*) It is over 7,000?—(*A.*) It is over 7,000. It cannot "be right that men and women of 20 or 21 years of age should be separated for life "and be debarred from marrying." But the evidence has shown that happily this view is erroneous. In the first place, through a mistake for which the compilers of the statistics are not responsible, the number given of separation orders was too high. Secondly, the number of such orders is dropping very largely year by year. In 1907 it was 7,007; in 1908, 6,986; in 1909, 5,227; and in 1910, 4,539. This drop is due to an abandonment in many police courts of the objectionable practice of making an order for separation where only one for maintenance is necessary. Even now it is clear from the evidence that a vast number of needless separation orders are made either because the point is not appreciated, or because, as at Sunderland, the local magistrates prefer to adhere to their old practice. Many witnesses with special knowledge, *e.g.*, magistrates, clerks to justices and solicitors, told us that separation orders were often granted far too readily. In one London court the presence of a particular stipendiary almost doubled the number of orders, because he entertained a "chivalrous view." It is, of course, the fact that in almost all cases where a maintenance order (without separation) is made the husband has temporarily or permanently abandoned his family, so that for the moment, at any rate, there is a *de facto* separation. How these cases at the present day compare in point of number with those of a similar type in former times, or in other countries, we have no means of judging. Considering the endless variety of circumstances which attend such cases, especially as to the completeness and duration of the desertion, it would be absurd to treat them as in the mass indicating a demand for divorce.

Civil Judicial Statistics, 1908, p. 17.

Lord Gorell's speech in H.L., Hansard, 5th series, vol. 2, p. 481.
Macdonell, 392, 393.

Stringer, 23,386–429.
Civil Judicial Statistics (1909), p. 19.
Stringer, 23,402.

Barker, 10,791–8.
Halkett, 7252.
Garratt, 12,950.
Barradale, 8774.
Byrne, 9,672.
Cobbett, 10,052.
Willey, 10,218–25.
Holmes, Thos., 17,722.
Rose, 2138–40.

But the decisive reason why the attempt to class separation orders with decrees for divorce and permanent judicial separation is misconceived is that the former are not in fact permanent at all. They come to an end *ipso facto* whenever the parties choose to re-unite, and the evidence has made it overwhelmingly clear that these orders in most cases remain in effective force for a short time only. A very large proportion of the applicants do not appear on the day appointed for the hearing of their summons. A great many orders which have been made are never taken up by the applicants and remain unused in the magistrate's clerk's office. There are said to be 4,000 such orders at Leeds alone. Making very full allowance for cases where poverty or the uselessness of seeking to serve the order on the decamped husband, and not indifference or a change of mind, is the cause, it is impossible so to account for the whole of these abandoned orders. Finally, in the remaining cases where an order has been made and acted on, the parties come together again in a great proportion, probably a great majority, of the cases. The witnesses all agreed in the fact, though the actual proportion evidently varies in different localities. Some estimated reconciliations as highly as 70 or 80 per cent. of the cases, some as low as 15 per cent.; but most put it at above 50 per cent. The number of orders actually in operation at any given time is probably a mere fraction of those made during the preceding year. It was said that often the parties come together, not because they are really reconciled, but because of the economic pressure caused by the attempt to support separate establishments. Doubtless it is so in some cases; but, on the other hand, the evidence of the police court missionaries, who on this point are the best

Willey, 10,407.
Marsham, 1782.
Neville, 6860, 6861.
Brown, 7573.
Dingle, 7962, 8065, 8066.
Roberts, 8133–7, 8268, 8710–19.
Barradale, 8792, 8803.
Sanders, 9007, 9008, 9100 9101.
Barker, 10,790, 10,804.
Peacock, 9198.
Byrne, 9644.
Sowerby, 9779–81.
Willey, 10,408.
Baker, 10,753–4.
Payne, 11,158.
Simpson, 11,335.
Lloyd, 12,423.
Wansbrough, 17,428 32.
Fraser, 20,500.
Holmes, T., 17,722–6.
Holmes, R., 18,020, 18,027.
Bladon, 18,148. 18,169. 18,170.
Palin, 18,218–23 18,296–305.
Holmes, J. C., 18,387.
Lightfoot, W., 18,534, 18,535.
Pike, 18,660–3.
Mundin, 18,844.
Barnett, 19,211.
Massey 19,392.
Fitzsimmons, 19,500–2.

witnesses, is clear that it ought not to be regarded as the usual or typical explanation of a reconciliation.

Marsham, 1780 86, 1790-93. Rose, 1910-4, 2075, 2076. Neville, 6852. Atkinson, 6965-70. Halkett, 7233, 7273. Brough, 7794. Grubbe, 12,234. Peacock, 9236. Payne, 11,166-9. Lloyd, 12,419. Lightfoot, G. A., 17,522. Fraser, 20,489. Lightfoot, W. 18,521. Mundin, 18,804, 18,805. Barnett, 19,251. Fitzimmons, 19,513. *Contra.* Garratt, 12,950. Blott, 5828. Rose, 2045-8. Neville, 6902. Atkinson, 7106, 7065-7. Roberts, 8570. Brown, 7373-5. Smith, 7556, 7560, 7561. Dingle, 7983-5. Roberts, 8724. Barradale, 8776-80. Barker, 10,821. Harris, 9528. Sowerby, 9787, 9788. Willey, 10,378. Lloyd, 12,420-2. Wansbrough, 17,444-9. Holmes, R., 18,028. Holmes, J.C., 18,363-6. Fitzimmons, 19,503.

On the whole the present system of separation orders, while in need of considerable amendment, probably fulfils its purpose fairly well. We are largely in agreement with the recommendations of our colleagues for the more careful and more restricted exercise of the powers of magistrates to order separation. But we find it impossible, after listening to the evidence, to regard the existence and multiplication of separation or maintenance orders as indicating any widespread popular demand for multiplied causes of divorce. The witnesses are agreed that the poor do not ask for divorce, and the evidence of those who attribute this silence to the hopeless costliness of divorce proceedings goes rather to the necessity of increasing facilities for using the present law than to the need of its enlargement. It is the latter and not the former with which we are for the moment concerned. It is not a little reassuring to find so many witnesses with first-rate opportunities for learning the truth of the matter convinced that so far as the present ground of divorce, viz., adultery is concerned, it would be a mistake to regard any large proportion of applications for separation orders as cases which, if cost allowed and the facts were really disclosed, might be brought in the Divorce Court. It cannot be doubted, however, that immorality too often precedes a separation order, and is the root of the trouble which has necessitated the application; but the evidence is by no means clear that the order itself is a very frequent cause of misdoing; so far as women are concerned it appears that only a small proportion of orders are set aside on account of their adultery. Mr. Roberts * has made inquiries of all the clerks to justices throughout England and Wales as to whether in their opinion it has been proved, or there is reason to suppose, that the grant of orders of separation leads to immorality. Out of 141 replies to this question 104 are in the negative.

Another indication of the extent to which a demand exists for divorce on other grounds than those now allowed by law will be found in the letters addressed to the Commission itself during the pendency of the inquiry. It will be remembered that the Commission's sittings have been public, that they have lasted for more than two years, and that the evidence has been reported far and wide in the press. The subject is one which excites almost universal interest, and touches both social and individual life very directly. It was certainly to be expected that newspaper reports of the evidence appearing week by week, during a long period, in hundreds of London and provincial journals, with every aid to advertisement which large type effective headlines, and often editorial comment can furnish, would have produced a great flood of letters. But the very reverse is the fact. Of actual concrete cases thus brought under the notice of the Commissioners there are about 350, and if from these are deducted the cases where the present law provides a remedy and those where the only ground pleaded for divorce is incompatibility, there is a residue of less than 200 cases where there might be scope for one or other of the proposed widened grounds for divorce. Even these if they were examined would be found to require further sifting. Some are obviously imaginary narratives invented by the correspondent in order to bring out the supposed hardship of the law. All are *ex parte* statements. In how many cases the writers have suppressed facts which, if known, would disentitle them to any relief or sympathy it is impossible to say, but it is more than probable that such facts exist. Some are really cases not for divorce but for nullity of marriage. On the whole the small number of these letters seems entirely inconsistent with the existence of a wide public demand which has been so sedulously proclaimed. In saying this we are very far from desiring to under-estimate the amount of trouble and suffering which some of these letters reveal. Amongst them are the pathetic records, obviously genuine, of many hard and heartrending cases. The importance of the correspondence addressed directly to the Commission is increased by the fact that the writers of the letters are not confined to any one section of the community; some of them are evidently refined and highly educated, and others almost entirely illiterate. On the other hand, the evidence as to separation orders which we have been considering, and most of the oral evidence laid before the Commission concerns the working classes and the poor only, especially the casual and dock labourer class.

In conclusion, we have heard the evidence of those who represent themselves as the spokesmen of persons desiring or deprecating an extension of the grounds of divorce, and we do not think that this evidence indicates any large or widespread demand for changes other than changes of procedure. We have endeavoured to

R Holmes, 18,000.

* Appendix VI.

draw conclusions from the mass of evidence given to us relating to separation orders, but neither the evidence of the magistrates and other officials who administer this branch of the law, nor that of those who live and work among the poor, and who know the circumstances which precede and follow the making of these orders is in any way decisive as to the need of extension of grounds of divorce for the furtherance of domestic happiness or the raising of the moral standard. There is no doubt a section of society in our large towns in which that standard is deplorably low, but no one who reads the evidence on this point, notably that of Mr. R. Holmes, can fail to see that for the state of things which he describes, no change in the divorce laws could effect a remedy. We feel bound to record our opinion that, apart from such changes as may bring within the reach of all the remedies which the law provides for all, there is no effective demand that divorce should be made easier.

We pass now from the general question of the existence of a public demand for any extended grounds for divorce to the consideration of the particular causes which our colleagues recommend for adoption as new grounds for divorce.

The Proposals of the Majority Report.

The first in importance is desertion. It is recommended that desertion (in which term it is proposed to include wilful refusal to permit marital intercourse without actual abandonment of the home) continuing three years should be a ground for divorce. In Scotland, since the 16th century, desertion for four years has been so treated. The result is that the percentage of divorces in proportion to population in Scotland is double what it is in England. In the United States desertion is the most common ground on which divorce is obtained "owing to the "ease with which the charge may be supported." Mr. Crane, the senior counsel to the American Embassy in London, speaking of the great number of divorce suits founded on failure to maintain the wife (*i.e.*, substantially desertion) and a "mild form of cruelty," stated that "the existence of some form or some degree of mutual "arrangement in a majority of the actions for divorce in the United States may be "taken for granted." Mr. Justice Deane, describing the present system in our own Divorce Court, by which a decree of restitution of conjugal rights, obtained on manufactured evidence and disobeyed, has the effect of malicious desertion for two years, said: "So now if two people choose they can establish, without any wrong-"doing and by the easiest collusion, a decree of desertion. Then the wife goes to "the court and says, 'I have got my decree. Before that I knew my husband had "been guilty of adultery. Give me a divorce.' And they are entitled to it, you "cannot stop it. I think that is all wrong. The whole thing is a collusive arrange-"ment from beginning to end, though you cannot put your finger on it." Although the learned judge's objection was addressed to the present practice of his court established by statute, and not to the inclusion of desertion amongst the grounds of divorce, of which indeed he expressed approval, we cite his words to illustrate the peculiar facility with which desertion can be utilised by persons who desire to "arrange" a divorce. Mr. Barnard, K.C., speaking with great experience of the Divorce Court, put the matter thus: "I think if you have divorce for desertion, it is "practically coming to divorce by consent."

Census Report, U.S.A., p. 19.

Crane, 16,326.

Barratt, 16.686.

Crane, 16,328.

Deane, 848.

Carson, 41,776-81.

Barnard, 4329.

The typical case of hardship which is constantly pleaded as an argument for an extension of the grounds of divorce so as to include desertion amonst them, is that of a husband absconding to America or Australia and being entirely lost, so far as his wife is concerned. She does not know whether he is alive or dead, and, although she may be certain that, if alive, he is living in adultery, she cannot prove it. It appears from the evidence that amongst the class of people who use the Divorce Court such cases are common, and it has been too hastily assumed that they are equally common amonst the working classes and the poor. That they exist is, of course, indisputable, but the evidence leads to the conclusion that they are not very frequent. Witnesses with special means of knowledge have been called from Bristol, Cardiff, Gateshead, Grimsby, Hull, Liverpool, London (Thames), Manchester, Newcastle and Plymouth, whence desertion across sea is specially easy. They are for the most part silent as to the prevalence of instances of this type(*a*). Except at Liverpool, where the population is said to change more rapidly than in any other town in England, and at places like Gateshead, where the men's calling (*e.g.*, sailors, sea-going engineers) takes them away, desertion, sadly common no doubt, does not usually seem to take men out of the country, or in many cases out of the neighbourhood of the deserted home(*b*).

Bigham, 624, 625.
Deane, 849–51.
Barnard, 4195–200.
Priestley, 4526, 4527.
Wansbrough, 17,367-70.
Lloyd, 12,435.
Tooke, 19,947.
Halkett, 7221, 7343-5.
Payne, 11,135.
Wray, 11,103.
Clayton, 41,871, 41,922-4.
Goldstone, 20,965.
Sanders, 8964.
Solly, 10,684-6.
Sykes, 14,124, 14,125.
Fitzsimmons, 19,556.
Peacock, 9267-78.
Holmes, C. H., 18,403, 18,430.
Mundin, 18,934.
Daniell, 14.056, 14,057.
(*a*) Marshall, 42,642, &c.
Pearce, 11,372, &c.
Roberts, 8117, &c.
Rowland, 17,580, &c.
Smith, 7515, &c.
(*b*) Willey, 10,229.

It is now proposed to make desertion for three years a condition of divorce. In other countries the period varies from five years in Russia and the Netherlands to one year in Germany and Austria. It is obvious that the pressure of hard cases must always tend towards the curtailment of the required period. Indeed should the law be altered in accordance with the views of our colleagues, it will not be long before its failure to help the poor will become evident. When a husband deserts his home, and leaves a wife and young family to shift as best they can, the economic stress and the moral danger are most pressing at first. To tell a woman under these circumstances, face to face with actual want, and feeling the bitterness of being cast off, that if she can feed and clothe herself and her children and keep respectable for three years she may be allowed to make another matrimonial venture should opportunity offer, is surely very cold comfort. Yet, if the preliminary period is diminished, the probability, always great, is enormously increased of collusive divorces and of rash and hasty divorces which are the outcome of some passing outburst of temper. Few will be found to question that there are cases of the most grievous hardship arising out of desertion, cases which, if a law could be devised which would apply to them only, would have a strong claim on the State for relief. But they cannot be so isolated. If the law is changed it will apply to all cases, and we must face the fact that, in that event, if two married people want to get out of their marriage, there will be nothing to prevent their doing so if, without any ostensible agreement, they choose to separate for a period which to-day it is proposed to fix at three years, but which in some countries is 12 months, and which is certain to grow shorter rather than longer. It is said that collusion is not observed to follow the law as to desertion in Scotland. To which it may be replied that in America, where experience is on a far vaster scale, it has followed to such a degree as to scandalise all decent people. We believe that many of the worst cases of hardship as a result of desertion will be remedied if the proposal in which all the Commissioners concur be adopted for giving a spouse whose partner has not been heard of for seven years an opportunity to obtain an order allowing death to be presumed.

Census Report, (U.S.A.), pp. 336, 362, 379, 384.

It is proposed to make cruelty, which has hitherto been a ground for judicial separation, a ground for divorce. Much of what has already been said with regard to desertion applies with perhaps even more force to cruelty. The legal definition of cruelty is, and always has been, rigorous, but its application to particular cases in the Divorce Court has been of such a nature as to bring very trifling matters within its scope. Lord Mersey (then President of the Probate Division) said, as the result of his experience: "You know that the same story of cruelty may be told by the "husband and the wife in such a way as to create quite different impressions, and "it is difficult to know what cruelty is. It depends very much on the mind of the "man who is trying the case." It is said that the definition of cruelty is strained now because adultery of the husband does not entitle a wife to divorce, unless she can also prove cruelty or desertion, and that the temptation so to strain it will disappear when either ground alone is adequate if established by evidence. But it must be obvious that cases will arise in future, as they have in the past, though perhaps not so frequently, where the success of a divorce petition will depend upon whether cruelty can be made out. It is not unreasonable to assume that the same influences of pity for suffering and indignation at unmanly conduct will operate in the minds of judges and juries as hitherto. In the United States of America, as we have already pointed out, cruelty and desertion are the recognised and much employed excuses for the multitude of collusive divorce decrees which year by year are pronounced there. Speaking of a charge of "a mild form of cruelty" as the easiest mode to procure divorce, Mr. Newton Crane said: "The large number of suits filed, "and the ease with which decrees may be obtained, have a growing tendency to "familiarise the community with divorce, and it must be admitted that it is now "looked upon by people of respectability in certain walks of life as a popular and "firmly established institution. The view is spreading that if an unhappily married "couple desire to have their marriage dissolved it is a matter which is peculiarly "their own affair and one with which the public has nothing to do. If they mutually "agree as to the result, the method of procedure does not much mind as long as it "conforms to the statutes and the rules of court, and provided also that there is no "open fraud upon the court in suppressing and inventing evidence."

Bigham, 621.

Crane, 16,328.

The conception of what constitutes cruelty differs materially in classes and even in families; it may also differ in the minds of judges. A blow in one class of life is not the unforgivable injury that it might be in another: a frankness of sarcastic speech that would be regarded as injurious to "mental health" in one family might be the daily

practice of another and regarded as an agreeable characteristic by themselves and their friends. The definition of cruelty which we are invited to adopt would inevitably promote collusive suits, would leave the dissolution of the marriage tie to the varying discretion of judges and might lead to a divorce being granted to parties who would afterwards bitterly regret the temper in which they had put the law into force.

Insanity is another ground for divorce proposed by our colleagues. The conditions are these. The court must be satisfied that the insanity is incurable, the spouse to be divorced must have been continuously confined under the provisions of the Lunacy Acts for five years, and must be, if a woman, not more than 50 years of age, or if a man not more than 60 years of age at the time of the divorce. Great stress is laid on the number of insane persons in the country. Sir James Crichton Browne, the Lord Chancellor's Visitor, thought the number of persons who would be affected by a change of the law might be between 15,000 and 20,000. The evidence produced before the Commission showed that in the present condition of medical knowledge only a very few insane persons recovered after five years of continuous lunacy. Several witnesses advocated this change of the law on eugenic grounds. It was said that persons suffering from recurrent insanity return to cohabitation during the intervals between attacks, with the result that children with an hereditary taint are propagated. It is to be observed, however, that the proposal of the Majority Report does nothing to meet this point.

Crichton Browne, 34,952.

Coupland, 34,079–84.
Jones, 34,232, 34,280–4.

Insanity as a ground for divorce is unique in this respect, that it inflicts dissolution of marriage on a spouse for misfortune, and that even in cases where the insanity is really due to the fault of the other spouse who is seeking divorce. Unkindness and conduct producing distress may be quite incapable of legal proof, and perhaps only known to the unfortunate victim, and yet may be an effective cause of breakdown.

Chambers, 35,865, 35,866.
Moore, 41,057,

It is one of the marks of progress of the last half century that insanity has come to be recognised as bodily disease and to be treated accordingly. It is surely a retrograde step to single out insanity only as a ground of divorce while the Majority Report does not venture to recommend that, for example, epilepsy or paralysis should be so treated.

Cooke, E. M., 35,373, 35,375, 35,409–12.
Moore, 41,060, 41,061.
Winterbotham, 11,601-3, 11,647-9.
Clouston, 34,192–214.
Hyslop, 34,398, 34,423-5.
Crichton Browne, 34,953, 35,000–10.

The evidence, though not unanimous, is clear that in the opinion of medical experts the fact that incurable insanity is made a ground of divorce is likely to have a distressing and highly prejudicial effect both on persons suffering from temporary attacks of mania and on those who, without being insane, may have an apprehension, well or ill-founded, that there is a risk of their becoming so.

Needham, 35,296–301.
Chambers, 35,866–73, 35,951–6.
Moore, 41,059, 41,096–117.
Coupland, 34,107.
Hyslop, 34,422.
Savage, 36,000–30.

Clouston, 34,223.

There is no consensus of evidence of any great demand for divorce on the ground of insanity. Witnesses who are themselves in favour of the change, perhaps not unnaturally, think that others agree with them. On the other hand, leading authorities familiar with the working of asylums say the contrary. It is plain from the letters addressed to the Commission that the writers who desire divorce from an insane spouse (almost always husbands seeking release from lunatic wives) are in many cases merely desiring relief from an irksome expense.

Cooke, E. M., 35,376.
Moore, 41,182–4.

The great majority of experts on mental disease who gave evidence were very decidedly opposed to the proposal to make insanity a ground of divorce. This majority included four Commissioners in Lunacy, the Lord Chancellor's Visitor and a specialist of quite unique authority on this subject, Sir George Savage. His evidence is well summed up in his final answer: "There is no doubt of the " individual hardship, and that I have felt. I entered upon it with a feeling, I must " say, rather in favour of the divorce, but the more I have considered the indi- " vidual reports from these people, and the more I have considered my own 40 years' " experience, I cannot help thinking that there is not ground enough to justify the " alteration." We cannot admit that evidence of this character should be brushed aside as it is in the Majority Report on the singular ground that witnesses such as commissioners in lunacy and medical officers of asylums "would object to any enact- " ment which might prejudice in any way the welfare and comfort of those under " their charge." That is extremely probable, but we may be permitted to add that they are also the best judges of what would be "prejudicial to the welfare and " comfort of those under their care." We are bound, therefore, to accept their verdict that the adoption of this proposal would retard the recovery of the curable, painfully aggravate the lot of many of the incurable, and even help to upset the balance of some who, without being insane, are liable to become so. Without at all underrating cases of individual hardship to the sane partners, we cannot recommend a remedy for them which would be thus crudely callous to all other consequences.

Crichton Browne, 34,945.
Coupland, 35,103.
Needham, 35,277.
Cooke, E. M., 35,365.
Chambers, 35,848.
Savage, 35,984, 36056-7.
Moore, 41,043.

Savage, 36,057.

The proposal in which all the Commissioners concur, that when one party to a marriage is of unsound mind when it is contracted, and the other party is ignorant of the fact, the latter should be entitled to apply for a decree of nullity, will, if adopted, provide a remedy for some at least of these cases.

It will not be forgotten that the proposed Uniform Divorce Law for the United States does not contain insanity as a ground for divorce, and that during the last few years several States where this ground was recognized have, by express legislation, affected its abolition.

Habital drunkenness is proposed as a good cause of divorce in cases where a separation order on this ground has been made and, at the expiration of three years from its date, the drunkenness is found by the Divorce Court to be incurable.

There can be no question of the misery and mischief caused by a drunken husband or wife, especially amongst the poor, and in the interests of children more effective machinery is required for the enforced detention of inebriates. But we regard the present time, when there are hopeful signs that drunkenness, viewed as a disease, is likely to become amenable to treatment, as a peculiarly unsuitable one for stamping it with the finality and irreparableness implied in making it a ground for the dissolution of marriage. We note the extremely guarded language of Dr. Branthwaite, H.M. Inspector under the Inebriates Act, who, although of opinion that divorce should be allowed in "the worst cases, and under definite conditions to prevent abuse," admitted that "broadly speaking, divorce for inebriety would benefit the sober party "only, or practically so, and would be detrimental to the inebriate one." Branthwaite, 41,312.

Imprisonment where there has been a death sentence commuted to imprisonment for life is proposed to be made a ground of divorce. The scope for the application of this cause for dissolution of marriage is so limited that it is hardly conceivable that, if it stood alone, it would be regarded as a sufficient reason for disturbing the present law. Unless, therefore, divorce for desertion, cruelty, and insanity are admitted, we may perhaps disregard this proposal. If they should be admitted it is not easy to see that long terms of imprisonment can with consistency be omitted as good causes of divorce. If this ground is admitted at all it appears to be exceedingly difficult to draw a line, and to say that a death sentence commuted to imprisonment for life (*i.e.*, about 20 years) shall be a good cause, but a sentence, say, for 15 years shall not be so. The fact that the death sentence, if carried out, would have determined the marriage, seems inadequate as a justification unless in other respects the prisoner is to be treated as deceased. Some witnesses consider that even a moderate term of penal servitude should be made a reason for divorce, but the weight of evidence was entirely against a proposal which, in the attenuated form in which it survives in our colleagues' recommendations, seems to go either too far or not far enough.

Alverstone, 15,527. Desart, 15,830–49, 15,921, 15,922, 15,927–34. Alverstone, 15,587. Alverstone, 15,526. Lewis, 1460, 1462–6, 1546–52. Thomson, 40,511. Cooke, J. B., 40,558–628. Treadwell, 40,641–702.

The Lord Chief Justice's evidence on this point deserves most careful attention. His Lordship's view may be gathered from the following: "(*Q.*) You make no "distinction, I understand, between criminals for the purpose of the point we are "considering?—(*A.*) I do not make any distinction in principle. If you say would "you mind this being applied to a man who has a life sentence, the case Lord Gorell "put, that is far less objectionable: but I am dealing with the general principle, "and, so far as I can apply my mind to which side one's judgment should fall, I am "not prepared to draw the distinction; but I answer you at once frankly that there "would be less objection to dealing with extreme cases than to the average ordinary "case of penal servitude. For anything like 3, 5, or 7 years I do not think that the "wife ought to get divorced. The man has often been most faithful, her children "are his children, and I do not think the affection is always put on. In some "cases one knows that it is put on. In a very large number of cases I have tried "appeals on the ground of the wife and children are, I believe, really genuine. (*Q.*) I "was asking for the benefit of your assistance, because I think there is such a "great difficulty in saying at what period you would draw the line. (*A.*) I am "not prepared to make it a part of the punishment or a consequence of the offence "in any case."

Desart, 15,830–49, 15,921, 15,922, 15,927–34. Alverstone, 15,525–8, 15,580–7, 15,608, 15,609, 15,639–41.

On the question whether there is a demand on the part of the innocent spouse to have the opportunity of divorcing a convict partner, the evidence of Mrs. Hodder, who for 11 years past has been chiefly engaged in visiting prisoners' wives and families, is important. She says: "I have during that time seen some 3,000 cases; "I have analysed my books, and find that 1,575 were long-sentence cases, ranging "from 1 to 20 years; the remainder were of shorter duration. During the whole "of my experience in dealing with these people I have never heard of one

Hodder, 40,705.

" desiring divorce; the great majority of the women are very faithful to their " husbands."

We have now dealt with the five new grounds for divorce which our colleagues recommend should be established. There is one distinctive mark on them all. They are purely empirical in the sense that they are tentative, experimental, dependent upon qualification and degree. Desertion for three years is chosen, but we are told that if the well-to-do only were concerned four years would have been recommended. Under pressure of sufficient hard cases it might equally easily become two. Insanity is to be a cause, not only under conditions of time, but also of the age of the parties. Imprisonment under a commuted death sentence for, say, 20 years is to suffice, but not penal servitude for 10 or 15 years. Cruelty is to be a cause, but it needs to be defined, and is defined in a set of words which may mean anything from gross personal violence to the continuous exercise of a sharp tongue or the habitual indulgence in a surly temper. Inebriety is to be a cause, but the proposed definition of it leaves much to the discretion of the court and is admitted to be open to criticism. Some witnesses are in favour of drunkenness being a ground of divorce, but against penal servitude being so, and *vice versâ*. It is obvious that proposals like these have not even the semblance of finality. They are frankly opportunist, designed to meet what are supposed to be the practical needs of the moment, and capable of expansion in any direction under the pressure for further facilities, which concession is almost certain to produce. They must be judged, not only by their immediate and intended results, but by their inevitable sequel. If the State is to maintain any clear attitude as to divorce, it must take its stand upon some guiding principle. There is one principle, and, so far as witnesses, many of whom seek to deal with the question, have been able to help us, only one, which seems to include the various proposed extensions of the grounds of divorce. Each one of these is said to predicate a state of circumstances which proves that the purposes for which the marriage contract was entered into have been defeated, with the consequence that the combined life which it was the purpose of that contract to establish is in fact, and finally, determined. We suppose that this is what is meant by our colleagues when they recommend that divorce should be permitted for causes which " are generally and properly recognised " as leading to the break up of married life," or, as they elsewhere describe it, the " *de facto* termination of married life." What is to be regarded as " breaking up " married life? Is it separation? The separated parties may come together. Is it drunkenness? The drunkard may reform. Is it penal servitude? The prisoner may return better and chastened by punishment. Is it physical disability? Then permanent paralysis of the body may frustrate the objects of marriage as fully as paralysis of the brain. Moreover, if we accept this principle it must carry us much further than is now proposed. The conditions of the marriage contract are not only that the parties will live together and cohabit without exposing each other to bodily suffering. They promise to love one another, to take one another " for better for " worse, for richer for poorer, in sickness and in health " during their joint lives; and these promises are as much of the essence of the matter as any of the other obligations of the marriage state. The united life described in these familiar words may be fatally wounded and swept away without desertion, or cruelty, or insanity, or inebriety, or imprisonment. Who can judge, for example, the effect of unkind words, or studied neglect and indifference, offences which no court can grapple with, but which, nevertheless, may be destructive of real union? That union is determined when husband and wife have ceased to love one another. If, therefore, we are to adopt the principle we have stated, it follows that divorce ought to be permitted when it is clear that the parties have irreparably lost affection for each other, or, indeed, when either party has become permanently alienated from the other.

Majority Rep., pp. 98, 99.

The dilemma that presents itself is this. On the one hand, it is in the highest degree dangerous and unstatesmanlike to deal with so momentous a matter as marriage and divorce on notions of present expediency, without any governing principle to guide us; on the other hand, the only principle suggested is one which requires that divorce should be granted on the mutual consent of both parties, and on proof of the invincible aversion of either of them for the other. The Majority Report, it is true, does " not recommend these two causes as grounds of divorce." The reason assigned is significant. It is stated thus: " These suggestions have met with little support from " any of the numerous witnesses who have been called before us and are not likely to " meet with any substantial support at the present day in England." In other words, divorce for incompatibility and divorce by mutual consent are laid aside, not because they violate any principle on which the Majority Report is based, but merely because,

Majority Rep., p. 113.

for the moment, no effective demand for them can be discerned. But the inevitable conclusion of the premises adopted by our colleagues cannot be evaded. The evidence of several witnesses of distinction in different ways shows that they, at any rate, accept the position. Thus, Sir John Macdonell, at the very outset of the inquiry, advocated divorce by mutual consent, provided it be suitably safeguarded. Mr. Plowden, the police magistrate, thought that marriage is a "purely civil contract" and that it would be "an admirable thing" if it "could be put an end to by the consent of the parties." Mr. Maurice Hewlett, the well-known novelist, stated that in his view "bodily desire and spiritual intention to unite" are the essence of marriage, and that "if a man cease to desire his wife, or if he desire another woman," he ought to be entitled to apply for a divorce. Miss Llewelyn Davies, the general secretary of the Women's Co-operative Guild, stated the views of some members of her guild thus: "When man and wife agree to part, I feel it would be much better for the morals of "both to grant a divorce. All our members are most emphatic that where husband "and wife could not live happily together it was no real marriage, it was a life of "fraud without love. Nothing but love should hold two together in this most "sacred of all bonds." The suggested remedy is divorce. Miss Llewelyn Davies herself was of opinion that divorce should be granted whenever there was "a serious "desire on the part of either of the parties not to live with the other," and she explained that this would apply to the case of a man who wanted to be freed from his wife in order that he might live with another woman. Miss Llewelyn Davies added that in saying this she was expressing the opinions of the members of the guild generally, though some might not be so advanced. The guild, as already stated, numbers 25,897 members, respectable married women of the well-to-do working class. Of the 124 selected members to whom Miss Llewelyn Davies specially addressed inquiries, 82 were in favour of divorce by mutual consent.

Macdonell, 393. Plowden, 18,999, 19,045–50. Hewlett, 43,576. Davies, 36,998. Davies, 36,989. Davies, 37,048. Davies, 37,049–53. Davies, 36,965–8.

It is significant that a considerable number of the letters addressed to the Commission by persons who wished to plead for relief in their own cases deal not with any matrimonial offence, but are simply records of incompatibility, that is to say, from husbands or wives who have made a mistake, or find that they are not suited to one another, and claim on that ground that they ought to be liberated by law, and ought to be allowed to make a fresh marriage. The following is a typical instance: "I married when very young and more than a quarter of a century ago. "I separated by mutual consent (foolishly perhaps). As the law at present stands "neither my wife nor myself can obtain a divorce though I should much like to "be free, there are many cases of this sort, and if the law was only altered as "proposed by many that after a certain number of years' separation either party "could obtain a divorce it could injure no one and would give many much more "happiness."

Davies, 36,997, 36,998.

Whether divorce by mutual consent is likely to be adopted *eo nomine* is not the point, and is not practically very important. One of the strongest reasons for not allowing desertion and cruelty as good causes of divorce is the ease with which they may be utilised for the dissolution of marriages of which the parties have simply grown tired, and mutually desire to make an end. It will be remembered that experience in the United States emphatically confirms the reality of this danger, the recognition of which has been a main factor in producing the recent demand for reform to which we have already referred. The danger lies not merely in the risk of a misuse of law in individual cases, but in the creation of a habit of mind in the people; for there is evidently a tendency in the United States for husbands and wives and their friends in certain classes of society to see no discredit in divorce based on allegations of cruelty or desertion, while judges make no effort to detect collusion, but consider it to be their duty to facilitate divorce whenever the parties are obviously tired of one another's society. Divorce as the result of mutual arrangement is "looked upon by people of respectability in certain walks of life as a popular "and firmly established institution." We submit that the proposals of the Majority Report cannot be viewed apart from the principle upon which they are founded, and the consequences which logically follow, and have in fact followed, upon its adoption. Those proposals, if carried out by legislation, would lead the nation to a downward incline on which it would be vain to expect to be able to stop half way. It is idle to imagine that in a matter where great forces of human passion must always be pressing with all their might against whatever barriers are set up, those barriers can be permanently maintained in a position arbitrarily chosen, with no better reason to support them than the supposed condition of public opinion at the moment of their erection. But if the principle which lies behind the proposals of the Majority Report

Crane, 16,328, 16,503–9.

be once admitted, with all that it necessarily implies, the result would be practically to abrogate the principle of monogamous life-long union.

Would the adoption of our colleagues' proposals, with the consequences which, however undesired, must follow, be for the general welfare of the people of this country? That is the question we have to answer. We believe the preponderating voice of history and experience would answer in the negative, and that in giving that answer it would be supported by the verdict of the best and wisest of those in every age who have striven to promote the moral advancement and the happiness of the human race.

The Proposals in relation to the Christian Faith.

It is in this context that the teaching of our Lord cannot be put on one side. We have already said that in our opinion it is impossible to expect from non-Christian subjects of the State submission, as a matter of course, to the rules laid down by Christ for His own followers. We do not, therefore, conceive that the duty of the State is simply to translate into Acts of Parliament those canons, however venerable, of the Christian Church which have been supposed by it to express our Lord's mind as to divorce; although it may well be that to our forefathers such a course would have seemed obvious and proper. But it is the duty of the State to legislate for the general good of the whole nation, and in determining what will promote that end we must look for guidance, not to ephemeral conditions of the moment, even though enforced by sympathy with individual suffering, but to the fullest knowledge and the highest wisdom we can invoke. Every citizen has his share, direct or indirect, in determining the action of the State. It is, therefore, for each of us to measure for himself what weight he will give to the various materials upon which his judgment in this matter should be based. To those, and they form the great majority of the nation, who profess allegiance to the Christian Faith in one form or another it will be almost axiomatic that our Lord's teaching as to the true conditions of family and social life was intended to promote the general welfare of the world, and has for all Christian people a pre-eminent authority and an imperative claim to their loyal acceptance. That seems the necessary result of a belief in His unique personality. It is, therefore, of the utmost importance to turn to the words of Christ, if not for specific and final rules on divorce, yet certainly for the principles and ideals which make for the moral welfare of mankind.

Barnes, 37,426–31.
Birmingham, Bp., 21,241.
Cooper, 39,190.
Denney, 38,783, 38,790–8.
Ely, Bp., 23,058–63.
Henson, 22,585–7.
Inge, 38,678.
Moyes, 22,921,
Paterson, 23,274–8.
Rashdall, 39,306.
Sanday, 38,499, 38,531.
Scott Lidgett, 39,720, 39,721.
Jones, J. D., 41,968, 41,993.
Swete, Mem., vol. iii, pp. 316, 317.
Whitney, 39,012–8.
Wood, 40,379–85.

A considerable number of bishops and other learned clergymen and ministers, English and Scottish, professors of divinity and of Church history of the Universities of Oxford, Cambridge, Glasgow, Edinburgh, and London, representative members of the Church of England, the Roman Catholic Church, the Wesleyan Methodists, and the Congregational Union were examined as witnesses. Their evidence disagreed on matters of biblical criticism and exegesis, and as to the true construction to be put upon various well-known passages of Scripture dealing with this subject. Into these matters we do not enter. It is obvious that this Commission is not so composed as to be competent to speak with authority on such questions. But what is far more important, and indeed exceedingly impressive, is the absolute unanimity of these witnesses upon the fact and the nature of our Lord's teaching to the world on marriage and divorce. All are agreed that Christ intended to proclaim the great principle that marriage ought to be indissoluble. There is wide divergence as to whether the ideal thus held up by our Lord was or was not intended by Him to exclude any exceptions, but there is no doubt in the minds of any of the theological witnesses as to that ideal itself. To quote one of them (Dr. Inge): "It seems clear that "Christ in the words so variously reported by the Evangelists intended to inculcate a "higher view of the sacredness of marriage than was held by the Rabbis of either school. "Divorce had been allowed by Moses 'for the hardness of your hearts,' but 'from "the beginning,' that is to say, according to God's intention, marriage is essentially "an inviolable contract terminable only by death." When we compare the principle thus enunciated and vouched for by this remarkable concensus of authority as truly representing our Lord's teaching, with the principle, if there be any, which underlies the recommendations of the Majority Report, we find them irreconcilable. If the one is calculated to promote the public good the other cannot be so. That marriage should be normally life-long and indissoluble, and that marriage should be dissoluble on grounds which lend themselves to the easiest collusion, and which seem necessarily to involve the right of either partner to put an end to it at will, are contradictory propositions. If the nation desires, as we believe it does, to maintain

the ideal of life-long obligation, it cannot permit Parliament to lay down a long and increasing list of statutory exceptions, some of them dependent for their effect upon the construction of terms, which do not admit of precise definition, by judges who may well vary in their intellectual and moral attitude towards these questions of divorce.

The Proposals in relation to Family Life.

There are reasons at the present time which lead us to think that the State is called rather to strengthen than to relax the strictness of its marriage laws. It cannot be said that the natural tendencies of human society at the present time are moving in favour of an ideal of family life based upon a union life-long in its character. One might almost say that the family is the fundamental and permanent problem of human society, but the strength, coherence, and continuity of the family are threatened by two counter forces, (*a*) the assertion of individual liberty; (*b*) the claims of logical Socialism. As to the former there is a very widespread claim on the part of individuals for liberty from the restraints of marriage whenever they become difficult and irksome. As to the latter, logical Socialism is contending that the family stands in the way of the solidarity of the State, and this tendency is operative in many continental countries and in some of our own colonies. Much of the evidence brought before us in the interests of what is called eugenics follows the same line. It may be added that within the family itself, even in our own country, the same spirit of reluctance to accept the discipline of marriage is shown in the growing reluctance to accept its natural consequences, the production and rearing of children. The evidence in this respect of the increasing decline of the birth-rate in England and in Australia cannot be ignored. To these influences tending to disintegrate the family and the home must be added the increasing restlessness of modern life in all classes and the social effects of modern industry and of the massing of people in great towns. There are strong tendencies at work breaking up the family life and the continuous union of man and wife, which is its basis. "The problem of the family "is not merely a contemporary issue between expediency and idealism, but is one "element in the vastly larger problem of human progress and destiny. This is the "full scope and social importance of the problem with which the Divorce Court "and the Ecclesiastical Courts are trying to deal." The real question at issue is the alternative between the narrow expediency of trying to make the lot of certain parties concerned easier and happier, and the wider expediency of strengthening the family life against influences which are threatening its strength and stability. Moreover, the effort to promote that narrower expediency tends to defeat the effort to promote the wider expediency. Experience shows that on the whole increase of facilities and grounds of divorce leads to domestic instability. There is abundant evidence that the classes mainly affected by the Divorce Court are becoming less careful of the restraint and the obligations of family life. This certainly seems to be the effect of divorce legislation in the United States, and as we have already stated, it has led there to a strong and increasing reaction. The remarkable words of President Roosevelt make it plain that the danger is felt to be real and pressing and one which calls for serious and united effort to resist it.*

"Jesus Christ and the Social Question," by F. G. Peabody (Macmillan), 1904, p. 134.

The ultimate question therefore, the question which must be borne in mind in considering the difficulties and hardships which a high ideal of marriage inevitably involves, is whether at a time when tendencies disintegrating family life are strong, when, in America, to name but one country, where divorce has been made easier and wider, there is a strong reaction in favour of greater strictness, the State in England should relax its marriage laws—whether it ought not firmly to maintain them at least at the present standard. In other words, is the State in England to leave a position of comparative strictness towards which many citizens in other countries, such as America, appalled by the consequences of relaxation, are now painfully struggling to return? There can be no question that hitherto the strength of English social life has been the family—the home. The evidence is reassuring that among the great bulk of the people, especially among the middle class and artisans, the obligations of marriage are respected, and home life is pure and consistent. There can be little question that the reason for this state of things is the general social conviction that marriage binds those who enter it for better or for

* "There is a widespread conviction that the divorce laws are dangerously lax and indifferently "administered in some of the States, resulting in a diminishing regard for the sanctity of the marriage "relation." Message to Congress, January 30, 1905. Census Report, Introduction, p. 4.

worse. It is a life-long obligation with all the sacrifice which such an obligation involves. Our contention, therefore, is that the State, in its own interest, should maintain and not relax the standard of its present marriage law. It is in the interest of the State to strengthen the sense of responsibility in entering the married state, and the willingness of mutual sacrifice in continuing it. The provision of exceptions to the life-long tie of marriage must tend to weaken the very things that the State desires to strengthen. Will people be more careful about marrying where there is a suspicion of drinking habits, or lunacy, if it is known that when drunkenness or lunacy develops divorce with permission to re-marry may be easily obtained? Again, will people be more willing to make mutual sacrifices and allowances if they know that a careful absence of moderate duration may set them free?

It must not be supposed that in pressing these considerations we are either ignoring or seeking to minimise the great amount of suffering which now exists, and has always existed, in relation to ill-regulated marriages. Weakness and wickedness, selfishness and ignorance produce their inevitable results in this as in other departments of human life. The tragedy of an unhappy marriage is deepened a hundredfold by the pitiful misery it almost always brings on the children who suffer for the sins of their parents. But the fallacy we desire to deprecate is the tacit assumption that these ills are in any measure due to the lack of opportunity for divorce. Even as a remedy its practical limitations are obvious. If, for example, a wife with young children is to benefit by divorce, it is necessary (1) that a fresh husband should be found willing to undertake the burden of his predecessor's offspring, and (2) that when found he will be a better husband than the first. But, be that as it may, it is plain that we must seek the cause of matrimonial trouble at a much earlier stage than that which has been reached when the possibility of divorce becomes a practical question. The causes of marriage failure are, speaking generally, the lack of the sense of responsibility in entering the married state, and the lack of self-control, self-sacrifice, and sense of duty in continuing it. To attempt to deal with these matters by multiplying grounds of divorce is surely to attack the problem at the wrong end. That the problem is one as important as it is difficult no one will deny. Legislation improving the social environment of the working classes may do something. A more permanently effective system of elementary education would make young men and women far better equipped for family life. Possibly some restraint on the present freedom of adults to contract marriage without regard to conditions of health, or ability to maintain a family, may be practicable, and, if practicable, would certainly do something to diminish the number of unsuitable and unhappy marriages. But the only real remedy we believe will be found not so much in Acts of Parliament as in such influences as can be exerted to rouse the conscience and stimulate the moral sense of the nation.

The Proposals as touching the relations of Church and State.

If the recommendations of the Majority Report should be adopted and divorce should be made legally possible for the causes approved by our colleagues, it will become urgently desirable on grounds both of expediency and of justice that the relation of the Church of England to the marriage law should be reconsidered. As has already been stated, under the existing law about 61 per cent. of marriages in England are solemnised in church by clergymen of the Church of England. Every man and woman is entitled to require the incumbent of the parish within which he or she resides to solemnise his or her marriage, subject to formal conditions as to time, banns, consent, &c., and also to questions of the religious profession of the parties which have never been definitely decided. The parties must of course be legally competent to marry each other, and if either of them has been divorced for adultery, or if it is a case of marriage with a deceased wife's sister, a clergyman may refuse to officiate. There has for many years been considerable difficulty in connection with the marriage in church of divorced persons. If the State should decide to multiply the grounds of divorce it is certain that the great majority of the clergy will decline to officiate at the marriages of persons so divorced, and a large number of them will refuse to admit such persons to Holy Communion. The Church of England's present standards of belief and conduct do not contemplate the marriage of persons who have been already married and have been parties to decrees for divorce on the ground of desertion, cruelty, insanity, drunkenness, or imprisonment. It is significant that the Chairman of the Commission admits that if the views advanced in the memorandum which he tendered as evidence, and carried out in detail in the

20 & 21 Vict. c. 85. s. 57.
7 Edw. 7. c. 47. s. 1.
Resolutions of Upper House of Canterbury Convocation, App. XXV. c. (18).

proposals of the Majority Report, be accepted, the marriage "service seems to be out of keeping with modern thought and to need reconstruction." It is, we need hardly say, most improbable that the Prayer Book will be altered so as to make it consistent with enlarged views of divorce which are alien to its teaching, and which it seems to be admitted involve a departure, even if a necessary departure, from an ideal recognised by the State itself.

Gorell, Vol. III., p. 544, paragraph 104.

It is in the interests of the State that the Church, as the special guardian and trustee of Christian principle, should be encouraged to strengthen the loyalty of its own members to that principle for the sake of its value to the State. The State stands to gain in the interests of its own ideal of marriage as a lifelong union, and not to lose, if the Church is permitted to maintain that ideal with a strictness which the State may desire but cannot attain. Any Christian society, therefore, should be at liberty to give or withhold its own religious sanction to marriages to which the State reluctantly, but under pressure of social facts, feels compelled to give its civil consent. Nor do we think that there is anything inherent in the relations of Church and State which ought to withhold this liberty from the Church of England. The relationship of Church and State ought to be one not of subservience of the one to the other, but of co-operation within different spheres towards common ends. In the case with which we are now concerned this common end is the strengthening of the ideal of marriage as a life-long obligation. We urge the recognition of the liberty of the Church to exercise discipline over its own members in accordance with its own principles, not only in the interests of the conscientious convictions of Churchmen, but in the interests of the State itself.

It is outside the province of this Commission to make concrete proposals on this matter, especially as they would be designed to meet a state of circumstances which we trust will not arise. We desire, however, to state that in our opinion the Divorce Act of 1857, apart from any enlargement of the grounds of divorce, requires amendment so as to remove altogether any legal obligation on a clergyman to solemnise the marriage of a divorced person, and further so as to abrogate the right conferred by the Divorce Act on a person divorced for adultery to the use of his parish church for the celebration of his marriage. Should the recommendations of our colleagues be carried into effect, other or more radical changes might become inevitable. The only way out of a position of intolerable difficulty might be that the State should in all cases require and concern itself only with a civil ceremony of marriage. But we desire to say, that in our opinion the abolition of the religious solemnisation of all, or of a great majority of marriages would be a very great evil. We agree with the opinion expressed in the Report (1868) of the Royal Commission on the Marriage Laws, that it ought to be the aim of statesmen to attach the religious sanction to marriage. Further, it would be essential that any concession to the conscientious convictions of clergymen should be made with due regard to the constitution and discipline of the Church of England as a religious society.

20 & 21 Vict. c. 85. ss. 57, 58.

Report of R.C. on Marriage Laws, 1868 [4059], p. xxxiv.–v.

St. Albans, 21,161 –9, 21,211–5.

We recommend that, subject to the recognition of equality between the sexes, the law should not be altered so as to extend the grounds of divorce.

The Question of Jurisdiction. Local Courts.

With regard to the question whether greater facilities are necessary to enable persons of slender means living at considerable distance from London to exercise their statutory rights under the Divorce Acts, it is of course incontestable that no one ought to be deprived of his legal rights merely by poverty. Further, the evidence has in our opinion established that (*a*) the centralisation of all divorce business in London, and (*b*) the cost of divorce proceedings, have in fact prevented a considerable number of poor persons and persons of small means from bringing suits in the Divorce Court, which, but for the expense, they might have brought successfully. We concur in the recommendation of our colleagues that local courts exercising the jurisdiction of the High Court should be established. We also agree that it will be convenient that these courts should be held at centres where there is already a District Registry of the High Court. We do not agree with the proposal of our colleagues that these local courts should be forthwith opened in the whole of the 89 towns in England and Wales where District Registries exist. In our opinion a very much smaller number of local courts will meet the real need, while the wholesale facilities which it is proposed to offer are, in our opinion, likely to have a gravely unsettling influence on large classes of the people who would otherwise never contemplate, and who ought not to contemplate, divorce. It would be disastrous if

Clarke, 42,176-80.

divorce were made too easy, or if the views of some witnesses who, for example, regard it as a hardship that a man should lose a day's work over his divorce, were allowed to prevail. We recommend that local courts should be opened in a few centres only, with liberty to the Lord Chancellor to increase the number if and when it becomes necessary.

Our colleagues propose that the local divorce courts should be presided over by county court judges, of whom 8 or 10 are to be selected and to act as Commissioners for a year or more, going from court to court and giving their whole time to this business, while the work of their own county courts is to be left to deputies paid by the Treasury. In our opinion this arrangement is undesirable and bad. If the number of centres be limited in the way we propose, a very much smaller number of Commissioners than eight or ten will suffice. We recommend that in the first instance two should be appointed by the Lord Chancellor (with power given to him to increase the number), and that they should be chosen rather with reference to the special function they are to discharge than because they are county court judges. There seems no advantage in taking men away from work which at present occupies them fully, and which in their absence has to be left to deputies, in order that they may undertake other work of which they have no experience. Further, the effect of the proposal that after a year they should return to their own duties and be replaced by other county court judges, if carried out, must be that divorce law will always be administered in the local courts by judges without experience in that law. The importance of such experience was pointed out by the Lord Chief Justice and by the judges of the Probate Division in their evidence. Moreover, these relays of judges always new to the work would lack the assistance of trained officials and a Bar thoroughly familiar with the law and practice of matrimonial causes. It is idle to suppose that tribunals thus manned and equipped would dispense justice of the same quality as would be available to the rich suitor who could take his case to the court sitting in London. It cannot be doubted that the advantage of experience will be best secured if the Commissioners are in all respects supplemental judges for the divorce business of the Probate Division, and are in close and constant touch with the ordinary divorce judges.

Appendix VII., statement by General Council of Bar as to congestion of business in County Courts.

Alverstone, 15,500.
Bigham, 591.
Deane, 914–5.
Alverstone, 15,502.

It is proposed that the local divorce courts, presided over by county court judges, should only be open to litigants of small means, and that others should be obliged as now to come to the London court. This will be wholly mischievous if the arrangements are made on an assumption that the matrimonial affairs of the poor are of less consequence, and to be confided to a less important judge, than those of the well-to-do. Until now the business of inferior courts has been limited by the amount at stake in the litigation, not by the means and social position of the litigants. We are of opinion that the Commissioners should be empowered to take any divorce case whether in London or in the local courts, and that it should be open to the President of the Division to arrange the work of each sittings in such way as he deems expedient. If, for instance, he thought fit on some occasion himself to take a series of cases in local centres, and to leave a Commissioner to take London business in his absence, he ought to be able to do so. If the local courts were thus made, so far as the judges are concerned, really, as well as nominally, equal to the London court, there would be much less objection to the former being reserved for the exclusive use of litigants who could not afford to bring their cases to London.

Wrigley, 14,414–7.

Points of Agreement with the Majority Report.

Majority Report, pp. 70–82, pp. 120–138.

We concur in the recommendations of the Majority Report as to costs and generally as to procedure and practice, both as to divorce in the High Court and as to magistrates' orders under the Summary Jurisdiction (Married Women) Act, 1895, and the Licensing Act, 1902, except so far as those recommendations contemplate the substitution of divorce for mere separation in certain cases where magistrates' orders have been made.

Majority Report, pp. 116–119.

We concur in the recommendations of the Majority Report with regard to the nullity of marriage in cases (*a*) of unsound mind, (*b*) of epilepsy and recurrent insanity, (*c*) of venereal disease, (*d*) when a woman is pregnant at the time of marriage by a man other than the husband, who is ignorant of the fact, and (*e*) of wilful refusal to consummate the marriage.

Majority Report, pp. 119–120.

We concur in the recommendations of the Majority Report with regard to "presumption of death."

We concur in the recommendation of the Majority Report that whatever grounds are permitted to a husband for obtaining a divorce from his wife, the same grounds should be available for a wife in a suit against her husband. Majority Report, p. 89.

With regard to the questions relating to the publication of reports of divorce and other matrimonial causes, we concur in the recommendations of the Majority Report. We desire, however, to add that if the number of courts exercising divorce jurisdiction should be increased to anything like the extent contemplated by our colleagues, the difficulty of preventing divorce cases from being indiscriminately reported in newspapers, especially in the provinces, will be largely increased. Indeed, it appears to us unlikely that the recommendations proposed by our colleagues would, in the event supposed, be found adequate to counteract an evil which is great enough now, but which would then become very much greater. Majority Report, pp. 156–7.

We desire to express our cordial appreciation of the kindliness as well as of the ability with which the Chairman has presided over our deliberations. His knowledge and experience have always been placed freely at the service of his colleagues, and thus, while differing from his conclusions in certain matters which we regard as fundamental, we have gladly followed his guidance in a number of recommendations for the amendment of the law on points of great practical importance.

We desire also to associate ourselves with our colleagues in their appreciation of the able services which the Secretary, the Assistant Secretary, and the staff have rendered to the Commission.

All which we humbly submit to Your Majesty.

COSMO EBOR:
WILLIAM R. ANSON.
LEWIS T. DIBDIN.

2nd November 1912.

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APPENDICES

TO THE

MINUTES OF EVIDENCE AND REPORT

OF THE

ROYAL COMMISSION

ON

DIVORCE AND MATRIMONIAL CAUSES.

[redacted] to Parliament by Command of His Majesty.

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APPENDICES.

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APPENDIX I.

AN INTRODUCTION TO THE HISTORY OF DIVORCE.

Modern Western notions upon the subject of marriage and divorce have been largely influenced by the views of the Christian Fathers and early mediæval theologians. It is therefore necessary to examine the systems of law that helped to mould the views of these various Christian thinkers. This will involve some brief consideration of the systems of marriage and divorce adopted by—

A. The Cretan and Ancient Greeks;
B. The Romans;
C. The Jews.

It will then be necessary to consider—

D. The Early Christian Doctrine and Practice of Divorce;
E. The Practice and Doctrine of Divorce under the later Roman Empire;
F. The Romano-Germanic Law of Divorce;
G. The later Canon Law of Divorce;

and then to trace the history of divorce in England from the Reformation down to the Divorce Act of 1857.

A. *The Cretan and Ancient Greek Practice of Divorce.*—The Cretan and Ancient Greek practice as to marriage and divorce requires comparatively brief treatment, for although the Athenian law is stated not to have been entirely supplanted by the Roman until the beginning of the third century A.D.* its influence in Christian times can only be measured by its effect on Roman law. We may say generally that marriage was treated among the Cretans and Greeks as a free contract, and its dissolution was freely allowed, though definitely kept in check by rules as to the devolution of property on divorce.

Some writers have suggested that in the Homeric age divorce was entirely unknown, but our modern evidence as to divorce among the Cretans (which does not appear to have been considered by Dr. Howard, though he regards the evidence on which the absence of divorce is alleged as slender) almost certainly rebuts this conclusion. Thus the Leges Gortyniorum, discovered in 1884, contain some important provisions as to divorce. Divorce at will was nominally allowed, but if capricious it involved heavy money penalties. Moreover, if a husband by his bad conduct compelled his wife to leave him these penalties attached and *vice versâ*. The wife took with her on her departure not only the property that she had brought to her husband, but at any rate a portion of the extant produce on that property and also the results of all work (such as weaving) that she herself had done. If the husband was responsible for the divorce and was not justified he had also to pay her a fine of five staters.

With respect to a child born after the divorce the Gortynians devised a procedure to ascertain paternity, which foreshadows that contained in the Senatus Consultum Planciannm.† We thus see that the divorce law in force in the Cretan city in the sixth century before our era compares favourably with the later Greek laws,‡ and had a certain influence on Roman law.

By the Athenian Law divorce could be granted either to the husband or to the wife. For each there was a special type of procedure. The divorce pronounced by the husband was called ἀποπομπή (the sending away), while that secured by the wife was called ἀπόλειψις (the abandonment). But the latter term is sometimes used in the sense of Repudium. In the case of the husband's action no legal decision was required. The wife returned to her father or her κύριος and the husband retained the children. It was, however, usual for the husband to dismiss his wife before witnesses.

This class of divorce was closely restricted by the duty on the husband to return the wife's dowry.* It is probable, that in practice divorce was largely the privilege of the husband alone, owing to the legal requirements that rendered necessary the personal attendance of the wife desiring a divorce before the Archon and the filing by her of a written statement in support of her plea.† In a society that subjected married women to an almost Oriental seclusion these formalities must have presented no slight difficulty to wives desirous of exercising their legal rights; and the example of Alcibiades, who "collected a band of men and dragged" his wife Hipparete from the Archon when she attempted to obtain a divorce,‡ is significant of a distinction drawn as regards the sexes between the abstract legal rights and their enforcement.§ Either party possessed a right of action, but whether this was merely an action for "variation of settlements" or for the re-establishment of marriage is doubtful.‖ In one point the Greek law of divorce has no modern parallel (other than the necessity of parental consent), though it was followed in Roman times. A third party, namely, the father or his legitimate heir, could end the marriage either with the intention of taking the wife home again or of finding her another husband.¶ When the husband repudiated his wife it was his duty to find her another husband, and it seems probable that she had no choice in the matter.

As we have said, the dowry had to be returned (though probably not in the case of the adultery of the wife), and until it was returned, 18 per cent. per annum (9 obols a month) on the dowry had to be paid. The rather low position of women in practice in the matter of divorce was attacked by Plato, who in his Republic sets forth a higher ideal.** The Athenian law seems to have been finally supplanted by the Roman law about the year 212 A.D.††

A brief reference must be made to States other than Athens. At Thurium both parties had the right to divorce according to the laws of Charondas, but by a later law in either case the party repudiating the other was not allowed to marry a younger person than the repudiated spouse (Diodor. Sicul., xii. 18). At Sparta an unsuccessful attempt was made to authorise divorce for sterility.

B. *The Roman Practice of Divorce.*—The Roman law requires a more detailed discussion; for, as Dr. Howard maintains, in its later development it had negatively "most to do with shaping the ideas of the Christian "Fathers relative to the nature of marriage and the "doctrine of divorce."

The earliest forms of marriage known to ancient Rome formed a holy relationship,‡‡ and could only be contracted between persons possessing the *connubium*, in other words, the patricians. The consent was supplemented by the ceremony of confarreation, and the wife passed under the power of the husband and stood towards him *in loco filiæ*. The children of persons sharing the connubium were *in patria potestate*. Before the Servian reforms the plebeians not being citizens had not the *connubium*, and therefore possessed no marriage form. Their marriage or unions were not *justæ nuptiæ*

* See *A History of Matrimonial Institutions chiefly in England and the United States with an introductory analysis of the literature and the theories of primitive marriage and the family* (three volumes), by George Elliott Howard. Ph.D., at pp. 239, 240 of vol. I.; pp. 3 and 12 of vol. II., where Dr. Howard refers to Meier-Schömann's Der attische Process (II., 510–13), Geffcken's Ehescheidung vor Gratian, 12 *et seq.*; Odyssey, X. 58; XXII. 38; Hruza, Die Ehebegründung nach attischem Rechte, 21, 22 (on the unfavourable position of Athenian women), &c.

† De agnoscendis et alendis liberis, Digest 25, 3. Mömmsen, vol. I. p. 736.

‡ Gortyniorum Leges, Tab. II. 45, 46 *et seq.*, 53, 54 *et seq.* *See* generally as to the Greek law and practice of divorce the elaborate article by M. E. Caillemer contained in the *Dictionnaire des Antiquités Grecques et Romaines d'après les Textes et les Monuments*, edited by M.M. Ch. Daremberg et Edm. Saglio avec le concours de M. Edm. Pottier, vol. II, pp. 319-21 (Paris, 1892).

* Isaac., De Pyrrhi hereditate, par. 28, Didot, p. 253; *see also* Demosthenes c. Eubulidem, par. 41, Reiske, 1311; c. Neaeram, par. 54 and 86, R. 1362 and 1374; and Lysias c. Alcibiadem, I, par. 28, D. 136.

† Demosthenes *c. Onetorem*, I., par. 8, R. 866.

‡ Howard, vol. II., 12.

§ Andocid. c. Alcibiad, par. 14. D. 87; Plut., Alcibiades, 8.

‖ Pollux, *Onomasticon* III. 7.

¶ Demosthenes c. *Spudiam*, par. 4, R. 1029; Isac. *De Aristarchi hereditate*, par. 19, D. 308.

** Leges, XI., 929*e* and 930*a–b*.

†† Geffcken, op. cit., 15.

‡‡ Moyle, J. B., Imperatoris Justiniani Institutionum, 4th edition (1903), lib. I. tit. 10, de nuptiis, pp. 127 *et seq.*; Roby, H. J., *Roman Private Law in the Times of Cicero and of the Antonines*, vol. I., pp. 68–71, 133–6.

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and did not create either *manus* or *potestas*, though something analogous to both must have existed before Servius Tullius in 445 B.C. gave the plebeians the *connubium* (Lex Canuleia: Liv. 14, 6) and invented for them the formal marriage by coemption, which, like the marriage by confarreation, brought the wife under the power of the husband. Before the reforms of Servius and before the Twelve Tables (451 B.C.) we find that formless marriages took place between persons possessing the connubium as well as between plebeians, since the Twelve Tables [VI.] makes it quite plain that such marriages by a species of prescription created *manus*: and the Tables provided that if a woman desired to retain her independence she must absent herself from her home for three nights yearly. Directly that the Servian reforms gave the *connubium* to the plebeians this marriage *usu* (as it was called) was open to the plebeians, and by its means the husband obtained *manus*. Thus in the fifth century before Christ we have three forms of regular marriage creating *manus* and *potestas*, and in addition an irregular form, used by those who had not the *connubium*, which did not create *manus* or *potestas*.

The first form, marriage by confarreatio, is said to have been indissoluble in the earlier ages,* and the fact that the flamen and the flaminia were never allowed a divorce is some evidence of this. But the idea of divorce must have been introduced quite early since Plutarch attributes to Romulus a law forbidding divorce under ruinous penalties except for adultery or for one of two or three other grave causes,† and eventually (in, probably, the time of Domitian) divorce was formally recognised and took place by a religious ceremony called *diffareatio*.‡ There was divorce also in the case of marriage by *coemptio* by means of remancipation in a family council including the wife's relations.§ In the second century of our era, by the time of Gaius, a coemptionate marriage might be dissolved by either party by simple repudiation, and apparently the wife, having repudiated the husband, could insist on a remancipation to release his *manus* over her. Probably, in the case of a marriage in which *manus* had been created by use or lapse of time divorce could also be had, but we have no evidence as to the way in which it took place. No doubt it could be ended by repudiation, but if so, how did the *manus* come to an end? Could it end, as it came into existence, by prescription, or more probably, as in the case of a daughter by a single mancipation? The fact that there seems to be no evidence on the point shows that even in early times women rarely allowed the prescriptive period to run so as to give *manus* to their husbands.

The last question is of considerable importance in the history of marriage, as it is out of the inchoate marriage *usu* and similar but irregular marriages between those who had not the *connubium* that the mediæval marriage arose. In the prae-Servian plebeian marriage we find the origin of *matrimonium* as distinguished from *justæ nuptiæ*, and, as we have seen, these marriages were not ended by the invention of the coemptionate marriage. Formless unions continued to be made both between those who had and those who had not the *connubium*, and in the first case *manus* was prevented from coming, and in the second case *manus* could not come into existence. Where *manus* could have come into existence, namely, where the *connubium* existed, the better opinion is that the father has *potestas* over the issue of the union, though this had been denied by Dr. Karlowa.‖ *Potestas* was an incident springing not from *manus* but from the *connubium*. Hence the children of such a union were legitimate for all purposes, and when in the beginning of the third century (212 A.D.) the *civitas* and consequently the *connubium* had been extended to all free subjects of the Empire the distinction between *justæ nuptiæ* and *matrimonium* disappeared for all free persons, and there was practically no significance in the distinction in the time of Justinian.

We have seen how the confarreate and coemptionate marriage could be ended, and it is clear enough that the marriage *usu* could be ended in some formal way. But the marriage involving *manus* had actually disappeared (except in some special cases) before the end of the second century of our era, and had practically disappeared far earlier. Though the formless marriage was for a long while only recognised as *matrimonium juris gentium*, yet it rapidly became common, and after the second Punic War it attained the status of *matrimonium justum* and was soon the usual form of Roman marriage in ages that were swiftly sweeping away class distinctions and creating aristocracies of merit or of wealth. How then was the formless marriage ended? Apparently from the time of the Twelve Tables it was ended by a formal dismissal before witnesses* by the husband, while the Twelve Tables also show us that the wife, if the *manus* had not attached, could leave her husband at will. We must also notice that the Greek practice, by which a third party, namely, the father or other ascendant of either party who was *in patria potestas*, could end the marriage even against the will of the parties, was in force in Rome until the time of Marcus Aurelius.† No doubt the rapid extension of the formless marriage made some such check necessary, and perhaps to this origin we can trace the consent of the parent which under the French code is as a rule a condition precedent to a valid marriage.

With the disappearance of *manus* marriage became a union dependent for its legality on *connubium*, *pubertas*, and *consensus* of both parties. *Justæ nuptiæ* of this type could be ended by the voluntary action of either or both of the parties. A divorce by mutual consent was called *divortium bona gratia*, one-sided action was *repudium*, but the term *divortium* was also used (*Roby* i., 134). The husband and wife in such marriages were placed upon an equal footing. The wife retained full control of her property and had the same right of dissolving the marriage as the husband.‡ No formality of any sort (except a formal declaration of divorce such as *Tuas res tibi habeto*—or *agito*, and perhaps the reply *Redde meus*), nor the intervention of any court of magistrate was required.

Facility of divorce was increased by the Mænian law (167 B.C., 586 A.U.C.). Mr. Muirhead tells§ us that it (*inter alia*) "displaced the family council as a "divorce court, and transferred its functions in that "matter to a *judicium de moribus*,—a court of inquiry "nominated by the prætor, and whose duty it was "to decide to what extent there should be forfeiture "of the nuptial provisions in case of separation or "repudiation. The motives of the statute may have "been of the best, but its tendency was injurious; "for not only did it indirectly facilitate divorce, but "it rendered the idea of it familiar, and overthrew "that respect for the domestic council which had "hitherto been a check upon it." So far, indeed, was the theory of absolute freedom carried that Cicero (in the case where a man left his wife pregnant in Spain and without sending her a message of divorce (nec nuntium remisit) married in Rome and died intestate, leaving a son by each marriage) raises the question whether divorce did not arise *ipso facto* through the consummation of a second marriage of one of the parties or only *certis quibusdam verbis*.¶ Among causes for agreed divorce were barrenness, old-age, ill-health, service in the army, sacerdotal office.‖

The law of marriage and divorce was fully dealt with by Augustus a little before the opening of the

* Fest. Ep. s. v. flammeo; Gell. Noct., Att. 10, 15.

† Plut. Rom. 22.

‡ Plut. Rom. 50. (*See* inscription No. 2648 Orelli.)

§ Gaius. i. 137*a*; James Muirhead's Historical Introduction to the Private Law of Rome, 1899. p. 112. (*Cf.* the public sale of a wife in England and elsewhere, an illicit practice which is a survival of the Roman divorce by mancipation in the case of a coemptionate marriage. As late as the 14th century cases occurred among the aristocracy, and the practice was declared invalid by the King's Court in 1302 (Rot. Parl. i., 140, Pollock and Maitland vol. ii., 395-6). Instances are still reported in remote country districts.

‖ Röm. Ehe, p. 71. Muirhead, 114.

* Cic. *Phil.*, ii. 28, par. 69.; De orat., i. 40, par. 183; Gaius, Dig. XXIV. 2. 2. 1.

† Codex V. 17 fr. 5; Digest XXIV. 1. 32. 19.

‡ Howard, op. cit. 15. 16, where he refers *inter alia* to Geffcken, op. cit. 11; Tacitus, Annales, IV. 16. But the wife's fortune was penalised in the event of adultery (Ulpian Reg. 6. 9 *et seq.*).

§ *Historical Introduction to the Private Law of Rome*, by J. Muirhead, pp. 233-4. *Roby*, i., 135.

¶ Cicero, De Orat., I. 40, par. 183; *see also* Roby, vol. i., p. 135*n*.

‖ Dig. XXIV. 1. 60 62.

Christian era. The first of his statutes on this subject was the *lex Julia de maritandis ordinibus* of the year 28 B.C. This was violently opposed, and did not pass the Comitia till 18 B.C. In the same year the *lex Julia de adulteriis coercendis* was passed. In the year 4 A.D. the Lex of 28 B.C. was amended, but only accepted in the new form by the postponement of the operation of the Lex for three, and eventually five, years. It came into operation in 9 A.D., in which year a supplement to it was carried by the Consuls M. Papius and Q. Poppæus. This Lex Julia et Papia Poppæa* "a voluminous matrimonial code— " for two or three centuries exercised such an influence " as to be regarded as one of the sources of Roman " law almost quite as much as the XII. Tables or " Julian's consolidated Edict." By the legislation of Augustus† important changes were introduced into the practice of divorce with a view, it would seem, of remedying the inconvenience arising in social life through the uncertainty as to whether persons were single or married, and, if married, to whom. It was accordingly provided that the party requiring a divorce (*repudium*) should deliver a written bill to the other in the presence of seven witnesses, who must be Roman citizens of full age; otherwise the divorce was to be void. The law also provided for the imposition of pecuniary consequences on divorce, whether by husbands or wives. If the wife was guilty of adultery, her husband in divorcing her could retain one-sixth of her dos, but if of a less offence, one-eighth, while the husband might retain in respect of each child born of the marriage a sixth of the dos, though the whole amount thus retained might not exceed one-half of the dos. If the husband occasioned the divorce, he had to make immediate or early restitution of the wife's dowry. If both parties were in fault, no penalty fell on either.

It is to be observed that this legislation was introduced in the main with a view to publicity, and that there was no intention either to establish a State jurisdiction in matters of divorce, or (except so far as the pecuniary provisions might effect that object) to impose any material restriction upon the freedom of its exercise. One exception to this liberty was indeed imposed by the Lex Julia et Papia Poppæa of A.D. 9; the freed woman might not repudiate her former master had he taken her in marriage.‡ In all other cases divorce, however unjust, was legal; moreover, bargains or penal stipulations against divorce, or for a different penalty from what the general law contained were not held valid. "No modern law of divorce, so far as I know," says Sir John Macdonell in his memorandum prepared for this Commission, "has been so lax as the Roman." That it was largely taken advantage of is not surprising, and the following passage from a well-known modern writer, Sir William Lecky, clearly indicates the looseness to which it led:—

> "We find Cicero repudiating his wife Terentia, because he desired a new dowry; Augustus compelling the husband of Livia to repudiate her when she was already pregnant, that he might marry her himself; Cato ceding his wife, with the consent of her father, to his friend Hortensius, and resuming her after his death; Mæcenas continually changing his wife; Sempronius Sophus repudiating his wife, because she had once been to the public games without his knowledge; Paulus Æmilius taking the same step without assigning any reason, and defending himself by saying, 'My shoes are new and well-made, but no one knows where they pinch me.' . . . . Christians and Pagans echoed the same complaint. According to Tertullian, 'divorce is the fruit of marriage.' Martial speaks of a woman who had already arrived at her tenth husband; Juvenal, of a woman having eight husbands in five years. But the most extraordinary recorded instance of this kind is related by St. Jerome, who assures us that there existed at Rome a wife who was married to her twenty-third husband, she herself being his twenty-first wife."*

On the other hand, it is necessary to point out that some check was placed on reckless divorce from the time of Constantine to that of Justinian. "The " acceptance of Christianity as the State religion " brought with it a large amount of imperial legislation on this subject. On divorce by mutual consent " no restraint was imposed until Justinian,† as a " penalty, forced the parties into the retirement " of a religious house. Constantine‡ enumerated the " grounds on which repudiation should be deemed " justifiable, and additions to the list were made " by his successors. The penalties inflicted on the " guilty parties, as fixed by Honorius, were loss of " dos and donatio propter nuptias respectively. " Repudiation without any such good reason was still " more severely punished with enforced retirement to a " cloister, and forfeiture of the whole property in " favour partly of the cloister, partly of the guilty " person's statutory heirs."§ To this we may add that Justinian forbade persons convicted of adultery to intermarry.‖ "The legislation of Justinian's predecessors and the bulk of his own were levelled at " one-sided repudiations, imposing penalties, personal " and patrimonial, (1) upon the author of a repudiation " on some ground the law did not recognise as " sufficient,—and the lawful grounds varied from reign " to reign,—and (2) upon the party whose misconduct " gave rise to a repudiation that was justifiable."¶ However, we must notice that Justinian introduced a new check upon marriage itself that was destined to be a fruitful source of matrimonial difficulties and nullity suits for a thousand years after his time. This was the doctrine of spiritual affinity (*cognatio spiritualis*) which extended the bars to marriage implied in certain natural and adoptive relationships to the affinities that were considered to arise from the relationship of god-parent and god-child.**

No doubt the extreme views of various Greek and Latin Fathers upon the questions of marriage and divorce were the inevitable reaction from the moral and social results of an entirely corrupt social state in which the most evanescent unions were dignified by the name of marriage. The law of marriage, indeed, had been tightened rather than relaxed, and the abuse of the system of divorce was probably the result rather than the cause of the gradual decline of Roman morals which followed the Punic Wars. It was the desire for, not the opportunities of, divorce that had increased. The intervention of the State by the Mænian law (lex Mænia de dote††) in 166 B.C., which ousted the prehistoric domestic tribunal, indeed, seemed to increase the very evil that it desired to destroy. The inquiry by the prætor under this lex as to the variation of nuptial settlements after divorce did nothing whatever to check the practice of divorce. The age was corrupt, and neither the family nor the State could curb the evil. "A vast wave of corruption " had flowed in upon Rome, and under any system of " law it would have penetrated into domestic life. " Laws prohibiting all divorce have never secured " the purity of married life in ages of great corruption. . . ."‡‡

Such, shortly, was the state of the law of divorce in the Roman world in the first centuries of the Christian era. Before pursuing it into later ages when Roman law was profoundly modified by the doctrine and practices of the mediæval Church, it is necessary to state the Jewish law of divorce and the views as to the teaching of Our Lord on marriage entertained by the

* For account of its provisions, *see* Rudorff, Röm. RG., vol. i., p. 64, *et seq.* and Muirhead, 2nd Ed., p. 285. Karlowa (Röm. RG., vol. i., p. 618 *et seq.*) discusses juristic comments on this law.

† Lex Julia de Adulteriis, Dig. xxiv., 2. 9.

‡ D. xxiii. 2, fr. 45, 46, 48, 50, 51; xxiv. 2, fr. 11.

* *Lecky*, "History of European Morals," II., 306.

† Novellæ, 117. 10, and 134. 11.

‡ Cod. 6. 13. 1.

§ Moyle, p. 130. (Nov. 134. 11.)

‖ Novellæ, 134. 14.

¶ Muirhead, p. 357; and *see* Wächter, *Ueber Ehescheidungen bei den Römern* (p. 184 *et seq.*).

** Cod. 5. 4. 26; and *see* Inst. Lib. i., Tit. 10, &c.

†† *See* Voigt, *Die lex Mænia de dote*, and criticism by Arndts in the *Z. f. RG.*, vol. VII. (1867), p. 1 *et seq.*; and Muirhead, p. 234.

‡‡ Lecky, op. cit. II. 308. *See also* Dill, "*Roman Society from Nero to Marcus Aurelius.*"

early Church. We can then pass on to consider later developments under Christian rule of the law and practice of marriage and divorce.

C. *The Jewish Practice of Divorce.*—By the earliest Jewish law the husband could discard his wife at will. The Pentateuch introduced the formality of the written letter of divorce, and this was a limitation of the earlier freedom of divorce. Divorce, according to the Pentateuch, was the exclusive privilege of the husband, though "in the Babylonian Code of Hammurabi the wife had some power of initiative,"* and Egyptian papyri of the fifth century B.C., written in Aramaic, show that a Jewish woman could under certain circumstances *claim*, though she could not declare a divorce. Mr. Abrahams states that "This "condition remained unaltered in the first Christian "century." Dr. Driver says, "By the later Jews the "wife was permitted in certain cases to claim a "divorce, viz.: if her husband were a leper, or afflicted "with a polypus, or engaged in a repulsive trade "(Kethuboth VII., 10)."†

If a man ravished a virgin he was compelled‡ to enter into an indissoluble union with her, and if he accused his wife wrongfully of ante-nuptial incontinence, she could compel him to retain her or could accept a divorce. The Mishnah extended these exceptions to the cases where the wife was insane, or a captive, or a minor.§ But though there were only these formal exceptions to the freedom of divorce, yet in Jewish, as in Cretan, Greek, and Roman, law the question of the dowry was used as a practical check. Up to the first century before Christ the wife's father kept her Kethubah or marriage settlement funds, and the husband being free of all financial responsibility could dismiss the wife to her father's house. But in the first century the Pharasaic leader, Simon b. Shetah, enacted that the Kethubah should be merged in the husband's fortune, and since in practice he would have great difficulty in refunding the money, divorce could rarely take place.

The foundation of the formal Jewish law of divorce is to be found in Deuteronomy, chapter 24, verses 1–4:—

(1) "When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness‖ in her: then let him write her a bill of divorcement, and give it in her hand, and send her out of his house.

(2) "And when she is departed out of his house, she may go and be another man's wife.

(3) "And if the latter husband hate her, and write her a bill of divorcement, and giveth it in her hand, and sendeth her out of his house; or if the latter husband die, which took her to be his wife;

(4) "Her former husband, which sent her away, may not take her again to be his wife, after that she is defiled; for that is abomination before the Lord: and thou shalt not cause the land to sin, which the Lord Thy God giveth thee for an inheritance."

Commentators have been much divided upon the meaning of the words, "some uncleanness." Literally the words mean "the nakedness of a thing," and signify most probably some indecent or improper behaviour. The school of Shammai,¶ who lived a short time before Christ, taught that a man could not divorce his wife except for immorality; but the school of Hillel, who was a disciple of Shammai, founding their interpretation upon the word "thing" and the clause "if she find no favour in his eyes," taught that it was permissible to do so for the slightest of reasons: for example, if a wife's cooking was unsatisfactory. This apparently deep inconsistency is fully dealt with by Mr. Abrahams. He says:—

> "Hillel's language: 'Even if she spoiled his food,' is, of course, figurative, and may point to indecent conduct, a sense which similar metaphors sometimes bear. . . . Hillel was a teacher noted for his tender humaneness; it was he who popularised in Pharasaic circles the negative form of the Golden Rule before Jesus stated it positively. Hence it is not just to speak of his view on divorce as 'lax' or 'low,' even if (as no doubt later Rabbinic authority assumed) Hillel used this forcible language to preserve as inalienable the ancient norm that a husband possessed complete right to divorce his wife for any cause. For it must be observed that his 'lax' and 'low' view of divorce was also a more rigid and elevated view as to the necessity of absolute harmony in the marriage state." (Q. 38,397.)
>
> "Still his view (or its interpretation) did produce a condition of subjection in the women's status, and left room for much arbitrariness on the part of the husband. 'Aqiba, who went beyond Hillel in maintaining the husband's arbitrary powers ('even if he find another woman more beautiful'), was in fact no friend of divorce, for he applied the severest rules in estimating the pecuniary rights of the wife under the marriage settlement . . . . it is true, however, that their (Hillel and Aqiba) statement of the law helped to make and perpetuate it for future times. The injurious effect was much mitigated, though never theoretically removed, by subsequent modifications" and customs such as the reforms introduced in the year 40 A.D. by Gamaliel, who ordained that 'the *Get* or divorce letter must be subscribed by the witnesses.' (Q. 38,397.)

Mr. Abrahams lays stress on the fact that while the wife's consent was necessary to marriage, neither it nor rabbinic sanction was necessary to divorce* at the beginning of the Christian era.

> "The rule in the first century was (Yebamoth, XIV. 1): 'Woman may be divorced with or 'without her will, but a man only with his will.' If, however, the wife contested the divorce, it is highly probable that the husband had to specify his reasons and bring the matter before a regularly constituted Beth Din or Court of three. This was certainly the case if he suspected her of adultery (Sota, I. 3–4). The accusing husband took his wife before the local Beth Din or court of three, and after a first hearing two Rabbis would conduct the accused to the Supreme Court in Jerusalem, which alone could deal finally with such charges. If she confessed, she forfeited her marriage settlement and was divorced; otherwise the ordeal of the waters (Numbers, V.) was applied." The ordeal decided her guilt or innocence. (Qs. 38,387–9.)

"The penalty for proven adultery, when the capital punishment was abolished" (not later than the year 30 A.D., says Mr. Abrahams†), "was mitigated into the divorce of the woman" (the husband having no option since the rabbis forced him to present a Bill); the wife also lost all her rights under the marriage contract and was not permitted to marry her paramour.‡ The husband could, indeed was compelled to, divorce her on suspicion, but her settlements would be intact. The husband, however, had to give some reasonable ground for his suspicions.

> "It would therefore be to his advantage sometimes to prefer a public charge against her. The male adulterer was scourged, but was not compelled to divorce his own wife unless she insisted . . . . other consequences followed from the theory that divorce was the willing act of the husband. The divorce of the insane husband of a sane wife would be impossible (Yebamoth, XIV. 1), as he could not execute the deed of divorce. Nor could the insane wife of a sane husband be divorced by him, because she stood in all the

* Evidence of Mr. Abrahams, Q. 38,385.

† A critical and exegetical commentary on Deuteronomy, p. 271. *See also* on Jewish law in general, Stubbe, "Die Ehe im alten Testament," 31; and Amram, "The Jewish Law of Divorce."

‡ Deuteronomy, xxii.

§ The Rev. Dr. Hermann Adler, Q. 41,369.

‖ *Revised Version*, "Some unseemly thing."

¶ *See* as to these schools "Cruden's Concordance" under 'Divorce." It is not at all certain whether these schools represented the views of their respective masters, nor is there evidence from Talmudic sources to show that acute controversy on the subject of divorce existed in the time of Christ. *See* the late Dr. Adler's evidence (Qs. 41,433–4).

* Driver, *Genesis*, p. 270.

† Q. 38,397.

‡ Qs. 38,397A, 38,398; *Sota*, V. 1.

greater need of his protection. . . . (If the insanity were proved to have existed before marriage, the marriage could be pronounced initially void, for the marriage of the insane was illegal.)" (Q. 38,403.)

As we have seen in certain other cases of disease (though not of mere infirmity), either could claim a divorce, and in certain cases of infirmity (such as when the wife became a deaf-mute or was barren after ten years of marriage) the husband could claim a divorce.

Divorce was a private transaction, but certain formalities had to be observed in connection with the "Get" or Bill of Divorce, and, in case the wife was unjustly repudiated, what answered to her dowry had to be repaid to her from her husband's property.* This, as we have seen, was an effective check on divorce. Moreover, it must be remembered (as Mr. Abrahams points out) that "he could not secure himself against " the divorced wife's claim for maintenance unless he " satisfied the court that the divorce had been properly " executed, and that the wife's just rights had been " satisfied. In that sense, the courts would have a " power to revise his personal acts" even in the first century of our era.†

It would seem that in the time of Christ the best ethical sentiment among the Jews was against great freedom of divorce, and it was the rabbis' duty to effect a reconciliation between husband and wife where possible. Moreover, "the husband was expected to " show every possible considerateness to his divorced " wife. She was, of course, no longer under his " jurisdiction, she was *sui juris*, and her husband lost " the usufruct of her estate. This last fact was a " constant preventive of arbitrary divorce."‡ Moreover, " the charge on his estate for the settlement went " much further than his own estate; any property he " had ever possessed and had passed into the hands of " third parties might be seized by the wife for payment " of the settlement."§ The husband was expected to preserve the divorced wife from want. The question of the children of the marriage was an additional check on divorce among the Jews. If the wife retained the children, the former husband had not only to maintain his late wife but to pay her for her services to the children. "It is clear that a husband was very reluctant " to divorce his wife if she were also the mother of his " children."‖ There was no divorce for desertion, though the courts offered special facilities for the presumption of the death of the deserter, and every effort, rendered possible by "the excellence of inter-communication between Jewish settlements," was made to trace the fugitive.¶

New Testament Teaching.—The teaching of Our Lord as recorded in the New Testament is fully dealt with elsewhere, and it will be sufficient to set out here the principal passages bearing on the subject, namely, those in the Gospel according to St. Matthew (V., 31 32; XIX., 3–12), the Gospel according to St. Mark (X., 2–12), the Gospel according to St. Luke (XVI., 18), St. Paul's First Epistle to the Corinthians (VII., 1–16), and St. Paul's Epistle to the Romans (VII., 2 and 3).

St. Matthew.

V., 31. It was said also, Whosoever shall put away his wife, let him give her a writing of divorcement:

32. But I say unto you, that every one that putteth away his wife, saving for the cause of fornication, maketh her an adulteress: and whosoever shall marry her when she is put away committeth adultery.

XIX., 3. And there came unto Him Pharisees, tempting him, and saying, Is it lawful for a man to put away his wife for every cause?

4. And He answered and said, Have ye not read, that He which made them from the beginning made them male and female,

St. Matthew.

XIX. 5. and said, For this cause shall a man leave his father and mother, and shall cleave to his wife; and the twain shall become one flesh?

6. So that they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.

7. They say unto Him, Why then did Moses command to give a bill of divorcement, and to put her away?

8. He saith unto them, Moses for your hardness of heart suffered you to put away your wives: but from the beginning it hath not been so.

9. And I say unto you, Whosoever shall put away his wife, except for fornication, and shall marry another, committeth adultery: and he that marrieth her when she is put away committeth adultery.

10. The disciples say unto Him, If the case of the man is so with his wife, it is not expedient to marry.

11. But He said unto them, All men cannot receive this saying, but they to whom it is given.

12. For there are eunuchs, which were so born from their mother's womb: and there are eunuchs, which were made eunuchs by men: and there are eunuchs, which made themselves eunuchs for the Kingdom of Heaven's sake. He that is able to receive it, let him receive it.

St. Mark.

X., 2. And there came unto Him Pharisees, and asked Him, Is it lawful for a man to put away his wife? tempting him.

3. And He answered and said unto them, What did Moses command you?

4. And they said, Moses suffered to write a bill of divorcement, and to put her away.

5. But Jesus said unto them, For your hardness of heart he wrote you this commandment.

6. But from the beginning of the Creation, male and female made He them.

7. For this cause shall a man leave his father and mother, and shall cleave to his wife;

8. And the twain shall become one flesh: so that they are no more twain, but one flesh.

9. What therefore God hath joined together, let not man put asunder.

10. And in the house the disciples asked Him again of this matter.

11. And He saith unto them, Whosoever shall put away his wife, and marry another, committeth adultery against her:

12. and if she herself shall put away her husband, and marry another, she committeth adultery.

St. Luke.

XVI., 18. Everyone that putteth away his wife, and marrieth another, committeth adultery: and he that marrieth one that is put away from a husband committeth adultery.

I. Corinthians.

VII., 1. Now concerning the things whereof ye wrote: It is good for a man not to touch a woman.

2. But, because of fornications, let each man have his own wife, and let each woman have her own husband.

3. Let the husband render unto the wife her due: and likewise also the wife unto the husband.

4. The wife hath no power over her own body, but the husband: and likewise also the husband hath not power over his own body, but the wife.

5. Defraud ye not one the other, except it be by consent for a season, that ye may give yourselves unto prayer, and may be together again, that Satan tempt you not because of your incontinency.

* *See* Howard, op. cit., vol. ii., 14, where he refers to *Amram*, op. cit., 47, 48, 111–31: *see also* 25, 45, 78 ff. and the evidence of Mr. Abrahams.

† Q. 38,405.

‡ Q. 38,405; T. B. Pesahim, 113*b*.

§ Q. 38,405.

‖ Q. 38,407.

¶ Q. 38,411.

I. Corinthians.

VII., 6. But this I say by way of permission, not of commandment.

7. Yet I would that all men were even as I myself. Howbeit each man hath his own gift from God, one after this manner, and another after that.

8. But I say to the unmarried and to widows, It is good for them if they abide even as I.

9. But if they have not continency, let them marry: for it is better to marry than to burn.

10. But unto the married I give charge, yea not I, but the Lord, That the wife depart not from her husband,

11. (but and if she depart, let her remain unmarried, or else be reconciled to her husband); and that the husband leave not his wife.

12. But to the rest say I, not the Lord: If any brother hath an unbelieving wife, and she is content to dwell with him, let him not leave her.

13. And the woman which hath an unbelieving husband, and he is content to dwell with her, let her not leave her husband.

14. For the unbelieving husband is sanctified in the wife, and the unbelieving wife is sanctified in the brother: else were your children unclean; but now are they holy.

15. Yet if the unbelieving departeth, let him depart: the brother or the sister is not under bondage in such cases: but God hath called us in peace.

16. For how knowest thou, O wife, whether thou shalt save thy husband? or how knowest thou, O husband, whether thou shalt save thy wife?

Romans.

VII., 2. For the woman that hath a husband is bound by law to the husband while he liveth; but if the husband die, she is discharged from the law of the husband.

3. So then if, while the husband liveth, she be joined to another man, she shall be called an adulteress: but if the husband die, she is free from the law, so that she is no adulteress, though she be joined to another man.

These passages have been subjected to endless analysis from the days of the Early Fathers to the present time, and from these passages have been derived, in the main, the various teachings of the various branches of the Church on the subject of divorce. The evidence of a series of theological thinkers of the highest eminence and representing many schools of religious thought has presented to the Royal Commission a very great variety of views as to divorce based upon these passages. These views present a continuous line of opinion, from the view that marriage, whether it be undertaken by a Christian or a non-Christian, is absolutely and under all circumstances whatsoever indissoluble, to the view that marriage is not a specifically Christian institution at all and must be dissoluble whenever it has *de facto* ceased to exist. It will be convenient therefore to trace the evolution of opinion and practice among Christians on the subject of divorce.

D. *Early Christian Doctrine and Practice.*—The first four centuries of the Christian era were a period of indecision and uncertainty as to the principles that should govern the dissolution of marriage.* The theologians of that age being as yet unprovided with any formulated doctrine on the subject endeavoured to derive principles from the text of the New Testament and were at once met by many of the same difficulties that have been explained by various witnesses before the Royal Commission. The literature of the period extends from Hermas, a writer of the earlier part of the second century, to the age of St. Augustine, who died in the year 430.* The fact that the cause named in St. Matthew for divorce was accepted by many of the most distinguished commentators in this period incidentally gave rise to the acceptance by the Church in this epoch of many causes for divorce. Thus Hermas admits idolatry, apostacy, and covetousness equally with carnal transgressions as grounds for divorce, though he condemns remarriage, and it must be noted that such great thinkers as Origen and St. Augustine took even a wider view. Thus Origen in his Homily on St. Matthew says that "if a woman was guilty of "other crimes equal to or greater than fornication, as "if she were a sorceress, or a murderer of her children, "or the like, that for such crimes she might be law-"fully divorced"; and Augustine says† "that for "unlawful lusts, not only such as are committed by "carnal inclination with other men or women, but also "for any other lusts, which make the soul, by the "ill-use of the body, go astray from the law of God, "and perniciously and abominably corrupt it, a man "may, without crime, put away his wife, and a wife "her husband, because the Lord excepted the cause "of fornication, which fornication we are compelled to "take in the most general and universal sense." The fact that St. Augustine, as will appear directly, changed his view, adds to the general confusion of practice that marks this period. To Hermas succeeds Tertullian (c. 155–c. 222), who in his treatise on monogamy rejected all second marriages as unchristian. In the second book addressed to his wife he retracts this position and allows of remarriage after divorce.‡ It is to be noted that Marcus Minucius Felix, one of the earliest Latin apologists for Christianity, also condemns second marriages, and the notion that there is something blameworthy in successive marriages, the previous spouse or spouses being dead, was developed until fourth marriages were declared to be adultery. St. Augustine repudiated the whole idea as unscriptural. Origen (c. 185–c. 254 A.D.) declares (vii. in Matt.) that some bishops permitted women to marry again while their husbands were living. He condemns the practice as unscriptural. Lactantius Fermianus (c. 260–c. 340 A.D.), in his *Divinarum Institutionum* (vi. 23, fin.), considers that scripture allows divorce in the case of a man. He is silent concerning women. The Council of Elvira (305–6 A.D., can. viii. and ix.) excommunicates the woman who re-marries after divorcing a guilty husband, but does not attempt to declare a nullity; while the Council of Arles (314 A.D. can. x and [can. xxiv.]) asserts the general principle of indissolubility and advises the youthful husband who divorces his guilty wife not to marry again in her lifetime. A little later, Epiphanius,§ extending the principle laid down by Lactantius, allowed re-marriage when the previous marriage has been dissolved by fornication, adultery, or any such cause. St. Basil (329–379 A.D.) considered that re-marriage by a husband was pardonable, and his second wife not to be condemned; but that the woman is prohibited from re-marriage by the custom of the Church. (Ep. Can. i. can. 9.)

These witnesses forerun a group of great thinkers whose opinions prove that the mind of the Church in the fourth century was absolutely unsettled on the whole subject. St. Jerome (c. 340–420 A.D.), like Hermas, admitted idolatry, apostacy, and covetousness as well as adultery as grounds for divorce. But he considered‖ divorce forbidden to the wife by the passages in the Epistle to the Romans (cap. vii.) and in the First Epistle to the Corinthians (VII., v. 39). The fact that he speaks of the infliction of penance for remarriage as remarkable¶

* It should, however, be noted that Mr. Watkins, in his learned work *Holy Matrimony* [1895], asserts that "No writer "of the first three centuries is found to advocate or admit "the re-marriage of the innocent husband" (p. 225).

* As to this period, *see* the Notes of Cotelerius upon Hermas (*see* Bingham, vi. 249); Selden (ed. 1726, vol. ii., p. 807), "Uxor Hebraica," lib. iii., cc. 26, etc.; Bingham's *Origines Ecclesiasticae*, vols. vi. and vii.; and the authorities cited in the following works:—A. Esmein, "Le Mariage en Droit canonique," vol. ii. cap. ii. p. 45; Héfélé *Histoire des Conciles*, Paris 1870; "Le Divorce et la Séparation des Epoux" (Paris, 1891); Holtzendorff's Encyclopædia, article "Kirchen recht," by U. Stutz, vol. ii., p. 811; the authorities cited by Howard, op. cit., vol. ii., p. 24; Burge's Colonial and Foreign Law, vol. iii. (ed. 1911), pp. 4–75, 806–904.

† *De Sermo Dom. in Monte*, lib. i., c. xvi.

‡ *Tertullian*, translated by the Rev. C. Dodgson, vol. i. [no other issued], Apologetic and Practical Treatises, Oxford, 1842, p. 421, and note on pp. 431–33.

§ Haer. 59, c. 4, Ed. Colon., 1682, vol. i., p. 496.

‖ Ep. 55, Amand., par. 3.

¶ Ep. 77, Ad Oceanum de Morte Fabiolæ.

seems to show that the Church did not regard re-marriage as a matter for penalties at that date.* He describes such a marriage as "a fault" only (par. 3 and 4), excuses it on the ground of "necessity," and describes it as "the shadow of a miserable marriage." Again, in his Commentary on St. Matthew, he says "the wife is not to be dismissed but only for fornication." This is also the view of St. Ambrose (d. 397).

The views of St. Chrysostom (c. 347–407 A.D.) are somewhat difficult to grasp. In his 17th homily on the Gospel according to St. Matthew he accepts the exception in Matthew V., 32.† He says that Christ "added in good time this corrective, in one way "only giving leave to cast her out, but no other-"wise." But he also declares in an earlier passage of the same homily that "when cast out she continues to be the wife of him that expelled her." This seems to refer to dismissal for causes other than adultery. So when he turns to his 19th homily on the First Epistle to the Corinthians [vii., 1, 2] he asserts that in the case of adultery "the marriage has already been dissolved." The final view of St. Chrysostom seems to have been that marriage is absolutely dissolved by adultery, and this view was also held by Gelasius of Poictiers (c. 367), Theodoret (c. 387–c. 45 A.D.), and Asterius of Amasea (c. 400 A.D.). It is interesting to note that St. Chrysostom specially recognises that the introduction of the Letter of Divorce by the Jews was a step forward; that it was necessary to have a formal divorce to prevent confusion of spouses. Some modern writers have regarded the introduction of the Letter of Divorce as a step away from an earlier stage of indissolubility. St. Chrysostom did not hold this opinion, despite his view of the texts of Genesis. It is perhaps desirable to note the views of the spurious Apostolical Constitutions.‡ a fourth century document, which speaks of the loss of a husband by ways other than death, and those of the so-called Ambrosiaster,§ the pseudo-Ambrose (c. 380), who allowed re-marriage when the heathen party departed (in pursuance of 1 Cor. VII., 15), but considered that in the case of adultery remarriage was permitted to the man alone (in accordance with 1 Cor. VII., 11).

It has already been seen that St. Augustine at one time held not only the view that adultery was a good ground for divorce, but that there were other grounds based on the doctrine of spiritual fornication. He changed his view with hesitation, and adopted the intermediate position, that there can be divorce without the right of remarriage. St. Chrysostom apparently at one time held this view, which had long been held by a section of the Church. Three centuries earlier, Hermas had condemned remarriage as adultery, and St. Jerome, who held practically the same views as Hermas as to the grounds of separation, appears to have adopted his doctrine as to remarriage. Pope Innocent I. (who died in 417), in his third letter to Exuperius, Bishop of Toulouse, has no hesitation in calling remarriage after divorce adultery,‖ and in 407 the Fourth Council of Carthage at last proclaimed the strict theory of indissolubility.¶

Thus as the great fourth century grew to its close the Church was gradually making up its mind after long hesitation and on grounds of expediency that there should be no remarriage after divorce. The corrupt state of the Roman world painted in such bitter and pungent language by Asterius of Amasea (c. 400 A.D.) made some strong step seem necessary, and by this date the Church was free to legislate for itself without the fear of persecution. The action of St. Augustine finally settled the matter. The Papacy was with him, and that fact was not without importance. The long hesitation through which both St. Chrysostom and St. Augustine passed is a most significant fact in the history of theological development. It is difficult to dogmatize upon a question of construction when it is found not only that St. Chrysostom and St. Augustine differed, but that eventually each held the view originally held by the other.

St. Augustine seems to have felt that the solution was a question of statesmanship rather than of construing certain passages of scripture; that the age called for the exercise of what Dr. Sanday has called "the higher expediency." Yet he adopted the strict doctrine of the indissolubility of marriage with great hesitation. He first doubted his own doctrine of spiritual fornication which let in many causes of divorce and slowly came to the position that marriage is a sacrament, that it can only be ended by adultery and that it is not ended in such a fashion as to admit of remarriage. On the mere question of the construction of the scriptural texts he admitted to the last that the question of divorce and remarriage is surrounded with difficulties. He says in the most modest terms that he is really unable to solve the problem: "though "in my humble fashion I have thus investigated and "discussed these matters, nevertheless, I am not "ignorant that the question of marriage is most "obscure and most involved. I dare not profess to "have explained as yet, either in this or in any other "work of mine, all its complexities, nor if urged to "do so am I now able to explain."* Yet he did not hesitate, on the grounds of "the higher expediency," to formulate a law of marriage that has survived since his time. He gave the doctrine of indissolubility of marriage, says Esmein,† "a solid and in a measure a "scientific basis. He gave it a consistency forced "from the sacrament of marriage. He set aside at "one stroke all causes of divorce or of dissolution "other than death admitted by the secular law: "sickness, captivity, or prolonged absence. He was, "one may say, the artisan who gave the final touch "to the theory of indissolubility."

But while the great influence exercised by Augustine must be weighed, it must also be remembered that the final law of the Church as to marriage and divorce was not settled for many centuries after his time, not, indeed, for more than seven centuries after the time of Augustine, in the days of Gratian and Peter Lombard and Vacarius. This fact, coupled with the hesitation of the great Fathers of the Church on the subject, deprives historians of the evidence involved in continuous Church doctrine. There is no post-apostolic tradition with which to deal. We have rather a matter of Church policy that slowly took definite shape, but was not universally formulated until three centuries before the Reformation.

E. *Later Roman and Germanic Doctrine and Practice of Divorce.*—It will now be convenient to discuss shortly the trend of later Roman legislation. After the lex Julia, which has been discussed in a preceding section, there was little change in the law of divorce until the important edict promulgated by Constantine in 331. This law limited the cases for which divorce could take place without pecuniary penalties to three in the case of both husband and wife. The wife could obtain a divorce without penalties where the husband had been guilty of (1) murder, (2) poisoning, and (3) the violation of tombs. If she divorced her husband for any other reason, *e.g.*, for being a drunkard or a gambler, or for frequenting the society of loose women, the divorce seems to have been good in law, but she forfeited her dowry and was punishable with deportation. The husband could obtain a divorce without penalties in cases of (1) adultery, (2) poisoning, and (3) acting as procuress. If a husband divorced his wife for any other reason, the divorce seems to have been good in law, but he forfeited all interest in his wife's dowry and, if he

* Cf. Bingham, vol. vii., p. 304, and Dodgson, *op. cit.*

† Oxford ed., 1843.

‡ iii., 1.

§ The unknown author of Commentaria in xiii. Epistolas beati Pauli.

‖ Para. iv. (Sacrosancta Concilia, vol. ii., cols. 1255-6).

¶ Canon 102 in Integer Codex Canonum Ecclesiæ Africanæ (Sacrosancta Concilia, vol. ii, col. 1117). The canon runs as follows: "Placuit, ut secundum evangelicam et "apostolicam disciplinam, neque dimissus ab uxore, neque "dimissa a marito, alteri conjungatur; sed ita maneant, aut "sibimet reconcilientur: quod si contempserint, ad pœniten-"tiam redigantur. In qua causâ legem imperialem petendum "est promulgari."

* "His ita pro meo modulo pertractatis atque discussis, "quæstionem tamen de conjugiis obscurissimam et implicatis-"simam esse non nescio. Nec audeo profiteri omnes sinus ejus, "vel in hoc opere, vel in alio me adhuc explicasse, vel jam "posse, si urgear explicare." De conjugiis adulterinis ad Pollentium, lib I., cap. XXV. (end), paragraph 32, in Paris ed., 1839, vol. VI., col. 680; Basle ed., 1556, tome 6, col. 854.

† II., 53.

married again, the divorced wife was authorised to seize the dowry of the second wife.*

In 449 Theodosius II. and Valentinian introduced further legislation. The following principle was laid down: Consenu licita matrimonia posse contrahi, contracta non nisi misso repudio solui præcipimus. Solutionem etinem matrimonii difficiliorem debere esse favor imperat liberorum. The following were the grounds for divorce. The wife could obtain a divorce for the following offences:—(1) treason; (2) adultery; (3) homicide; (4) poisoning; (5) forgery; (6) violating tombs; (7) stealing from Church; (8) robbery or assisting, or harbouring robbers; (9) cattle stealing; (10) attempting a wife's life; (11) beating or whipping wife; (12) introducing immoral women into the house. The husband could obtain a divorce for any of the above except, of course, Nos. 11 and 12, and also for additional reasons:—(1) going to dine with men other than her relations without his knowledge or against his wish; (2) going from home at night against his wish without reasonable cause; (3) frequenting the circus, &c., after having been forbidden by him to do so.†

The importance of this last enactment lies in the fact that it remains at the present day with certain modifications the law of Greece, and is accepted by the Greek Church.‡

Thus under the growing influence of the Church Justinian forbade by the 22 Novel (6 and 7) and the 134th Novel (39) divorce by mutual consent, with the three following exceptions: (1) when the husband was impotent;§ (2) when either husband or wife wished to enter a monastery;‖ (3) when either was in captivity for a certain length of time.¶ By chapter 11 of the 127th Novel Justinian practically abolished divorce by mutual consent, and enacted that all who dissolved their marriages in this way should forthwith retire into monasteries and should forfeit the whole of their estates. It is interesting to note that on this forfeiture if there were children, one-third, if there were only ascendants, two-thirds, and if neither, the whole of the estate of the parties was to pass to the monastery.**

Justinian's successor, Justin, found it necessary, however, to repeal the prohibition of divorce by mutual consent, for, says this Novel of Justin II. (566 A.D.), "it was difficult to reconcile those who once "came to hate each other and who, if compelled to live "together, frequently attempted each other's lives." It will be noticed that throughout this legislation the strict principle of the indissolubility of marriage already conceived by the Church is completely ignored. Mr. Watkins shows* that by the Eclogue of Leo III. (the Isaurian) and his son Constantine (740 A.D.) a civil statute of the Empire abolished the licence of divorce by consent, and a little later (776 780 A.D.), under the Emperors Leo IV. and Constantine, every divorce effected by "vicious agreement" (*κακῇ συμφωνίᾳ*) was forbidden under the penalty of a sensible fine, and carried with it the annulment of any subsequent marriage. But by the beginning of the ninth century (806–815 A.D.) the canons of the Patriarch Nicephorus recognise that divorce by consent is again good before the secular law, and by the time of Basil the Macedonian (867 A.D.) divorce by consent is clearly recognised as valid. But the law changes again, and by the Prochiron of 870 A.D., the Epanagoge of the Emperors Basil, Leo and Alexander (c. 884 A.D.), and the Basilica (905–11) divorce by consent is forbidden.

It seems certain that the Roman law as enunciated from Constantinople affected in some measure the law of divorce that became operative in Constantinople from the date of its occupation by the Turks in 1453.

Sir Edwin Pears has given us a brief account of the Mahometan law of divorce that may be quoted here:—

> "Under a system of law which recognises polygamy and the practice of making marriages without consulting both parties, easy divorce was a necessity. Accordingly Mahomet provided a regular and systematic legal manner of obtaining it. But in Mahometan countries generally, and certainly in Turkey, this method was found much too slow, and in its place 'repudiation' has been substituted. The husband pronounces three times a simple formula by which he puts his wife away, and then, without the intervention of any kind of law-court, the woman ceases to be his wife. Eminent Moslem legal authorities, both of Turkey and India, recognise that the practice of repudiation is an abuse, but it exists; it is *adet* (custom), and has the force of law. I believe that in Turkey there are no cases of divorce, at least I never heard of one. The wife is simply put away . . . . The abuse in past years became so great that the lawyers who have generally been the defenders of women's rights came to their aid and invented a method which to some extent prevents the abuse of repudiation. When a Turk of any position marries, he now usually gives a bond to the wife or her father to the effect that if he repudiates her he shall forthwith pay a fixed sum as liquidated damages. In addition to such sum, the fact that the wife's property is safe from her husband's grasp makes a husband hesitate before he repudiates his wife. . . . . Moslems took much of their law from that of New Rome, which was more favourable to women than that of mediæval Europe. Probably also the system of polygamy rendered it necessary to strengthen the wife's hold over her property. Thus it comes about that upon repudiation the husband, with the aid of the lawyers, is compelled to give up all the property which his wife may have voluntarily brought into the common stock, and to pay the amount of the bond which he has signed."†

F. *The Romano-Germanic Law of Divorce.*—It would seem that among the Teutonic races marriage was in the earliest times a matter of purchase, under which the wife at first in fact, and later in theory, became the husband's chattel. With regard to the primitive law of divorce "it is highly probable that "among the German nations, so long as they were "heathen, the husband and wife could dissolve the

* III. Cod Theod. Tit. xvi. 1 (de Repudiis) (ed. Jacobi Gothofredi, 1665, vol. i., p. 310).

† *See* Codex Justiniannus, V., 17, 8. *See also* Legum Novellarum Divi Theodosii, lib. i., tit. xvii. (Gothofred. vol. VI., app., p. 9). In Cod. V., 18, the law as to the rights to property on divorce is laid down. *See also* Legum Novellarum Divi Theodosii, lib. I., Tit. xvii. (Gothofred. vol. VI., app., p. 9).

‡ The law of divorce under the Greek Church is fully discussed in vol. III. of Burge's Foreign and Colonial Law (published in 1911), pp. 54–64; (The Eastern Canon Law) on pp. 840–844 (Divorce). In Russia, members of the Orthodox Church may seek divorce for (1) adultery; (2) impotence; (3) loss of civil rights and deportation under certain limitations; (4) desertion for five years. In Servia the old law given above is more closely followed. In Greece Novel. 127 of Justinian is mainly followed. In the Eastern Church there is no separation *a mensâ et toro*.

§ Cod. Jus., V. 17. 10, and Novella, 22. 6.

‖ Novella, 134. 39.

¶ Novella, 22. 7.

** *See* G. E. Heimbach's edition of the Novels (Leipzig, 1851). Novels 22 (*de nuptiis*), 127 (cap. 10 and 11), and 134 (cap. 39). Novels 117 (cap. 10) and 134 (cap. 11) are referred to in various text-books as authorities on this point, but in Heimbach's edition of the Novels Novel 117 has only four chapters, and the 11th chapter of Novel 134 does not deal with the subject. Chapters 10 and 11 of Novel 127 are the important enactments. If we adopt the text of the Corpus Juris Civilis followed by Dionysius Gothofredus, we find that the following was the order of legislation: Lex 9 of the section of the Code entitled *De repudiis* (liber v. Tit. xvii.), and Novella 22 (*De nuptiis*), cap. iv., allowed divorce by mutual consent. Novella 117 contained the following chapters dealing with divorce:—c. 8, *De justis divortiorum causis marito permissis*; c. 9, *De justis divortii causis mulieri concessis*; c. 10, *Ut non liceat consensu matrimonium dissolvere, nisi ex causa probabili*. cc. 11 and 12 give the exceptions to this rule. The provisions of chapter 10, forbidding divorce by mutual consent, were reinforced by Novella 127, chapter 4, *Matrimonium sine causa dissolvendum non esse*, and Novella 134, chapter 11, *Pœna unjusti repudii*.

The effect of this legislation was to prohibit divorce by mutual consent, except in the three cases mentioned in the text, and to impose property penalties if the rule was infringed. This rule was reversed by Novella 140, chapter 1, *ut consensu matrimonium solvi possit*, passed by Justin, Justinian's successor. (Corpus Juris Civilis, ed. 1663, vol. 2.)

* *Holy Matrimony: a treatise on the Divine Laws of Marriage*, by Oscar D. Watkins, pp. 349–352.

† *Turkey and its People*, by Sir Edwin Pears (pp. 69–70).

" marriage by mutual consent, also that the husband " could put away his wife if she was sterile or guilty of " conjugal infidelity or some other offences and could " marry another woman."* The Roman law with its ancient doctrine of divorce by mutual consent springing as we have seen out of the inchoate marriage *usu* was gradually amalgamated with these local customs as Roman control was extended.

Thus the Burgundian law says: "Consensu partis " utriusque repudium dari et matrimonium posse " dissolvi"; and the Bavarian laws†: "Si quis liber " uxorem suam sine aliquo vitio per invidiam di- " miserit, cum 40 et 8 solidis componat parentibus." But the Burgundian laws sharply distinguish between the rights of husband and wife thus: "(1) Si qua mulier " maritum suum, cui legitime est juncta, dimiserit, " necetur in luto"; and "(2) si quis uxorem suam sine " causa dimiserit, inferat ei alterum tantum, quantum " pro pretio ipsius dederat, et multæ nomine sol. 12."‡ There has also to be taken into account the compromise with Christian doctrine. It is clear that marriage after divorce was not absolutely prohibited, but the severity of the penalties for putting away a wife unjustly, show the influence of the Church. Accordingly, though a one-sided divorce on the part of the husband is not entirely taken away, the grounds upon which he may act are more or less restricted in harmony with Roman ideas, and the wife is herself given the rudimentary right of one-sided repudiation where the husband is guilty of very grave crimes. These modifications are derived from the Theodosian Code, and are preserved in MSS. such as the *Epitome Codicis Guelpherbytani* or the *Epitome Monachi*. In the Law of the West Goths, for instance, where Christian influence is more marked than in other Codes before the close of the 8th century, the right of the man to put away his wife is restricted to cases of adultery, and malificia or certain other offences, while for three scandalous wrongs (murder, malificia, or violation of tombs) the woman may repudiate the husband and (according to some MSS.) contract another marriage;§ but the manuscripts vary on several points, the authorities are obscure, and all that can be said is that these laws show a growing strictness both as to divorce and remarriage which reflects the same movement in Roman law that became noticeable from the time of Theodosius in the mid-fifth century.

It appears that in Ireland, Wales, and England the doctrine of dissolubility had a prolonged struggle with the Church with, however, the same tendency towards restriction of divorce which was visible elsewhere. In Ireland "there were seven cases in which " the wife could legally separate from her husband " and retain the whole or part of her *Coibche*, and " obtain special damages for injury."‖ The Roman influence seems plain in England: "the dooms of our " own Æthelbert, Christian though they be, suggest that " the marriage might be dissolved at the will of both, " or even at the will of one of the parties to it."¶

"The Anglo-Saxon and Frankish penitentials allow a " divorce *a vinculo matrimonii* in various cases: if the " wife is guilty of adultery, the husband may divorce " her and marry another and even she may marry " after five years of penance; if the wife deserts her " husband, he may after five years and with the " bishop's consent marry another; if the wife is " carried into captivity, the husband may marry another, " 'it is better to do so than to fornicate.'"* In the case of Wales it is also possible to recognise the Roman influence, surviving, it may be, from the Roman occupation of Britain. There was freedom of divorce to either party for definite causes, but settlements and fines, in fact, checked divorce at every turn.†

G. *The Later Church and Canon Law of Divorce.*— It will now be convenient to consider the attitude of the Church onward from the time of Augustine, where it was left for the sake of following some rough order of chronology, and to trace it, through the final settlement of the Christian doctrine of divorce in the Canon law, down to the Reformation.

From the time of the decree of Innocent I. and the Council of Carthage there is more or less wavering on the part of the ecclesiastical authorities, but in general the tendency is to uphold the strict doctrine of indissolubility. This is shown by the Councils of Angers (453), Canon VI.; Irish Synods under St. Patrick (c. 453), Canon 19 (first Synod), Canon 26 (second Synod); Orleans (533), cap. XI., forbidding divorce at will (cap. 19 forbids marriages between Jews and Christians); Nantes (658 A.D. Can. 12); the Synod of Aix la Chapelle in 789 (43) forbidding re-marriage in the lifetime of the other spouse. The Diet of Worms of 829 adopted the same position (Héfélé, v. 270 3); as also Friuli (796 A.D.), Canon 10; Paris (829 A.D.), Canon 2. The second Council of Toletana in 531 forbade the marriage of close relatives. The third Council of Paris (557 A.D.) forbade marriage with deceased wife's sister or brother's widow, following the Theodosian Code and the Council of Agde (505) and the first Council of Orleans (511).‡ On the other hand, the Council of Vannes (465 A.D.), Canon 2, expressly exempts from anathema those men who marry again after putting away their wives for adultery, and the Council of Agde (505 A.D.), Canon 25, while expressly allowing more than one cause of separation *a vinculo*, threatens with excommunication only those secular persons who repudiate their wives for the sake of remarriage "without establishing in " advance before the bishops of the Province the " causes of their divorce." In 692 Canon 87 of the Council in Trullo (692), following the 57th Canon of S. Basil, made second marriage after abandonment the ground of penance for four years; in 726 A.D. Gregory II., in a letter addressed to St. Boniface, permits a man to contract a new marriage because his wife by reason of infirmity is unable to perform her conjugal duty. This, however, is contrary to a previous decision of the same pontiff, and is suggested by Freisen§ to have been a permission in a case of a marriage void *ab initio*.

In 744 A.D. the Synod of Soissons (Canon IX.) again forbids divorce, except that it allows the husband to put away a guilty wife on scriptural grounds, but nothing is said as to remarriage (and *see* Epis. vii. cap. 12 of Pope Zacharie c. 743). The Synods of Verberie (752 A.D.) and Compiègne (757 A.D.),‖ however, proclaim again the more tolerant view. According to the former, the man whose wife plots against his life may put her away and take another spouse, but the divorced woman may not remarry¶; so also a man may form a new marriage if his wife refuse to accompany him on flight from danger, or if he has to follow his lord into another duchy or province, but the woman

* Geffcken, op. cit., 33, 34, 45, 44; Freisen, 778 80; Heusler, Institutionen, II., 291; Pollock and Maitland, History of English Law, II., 392, 2nd ed.; and the additional references given by Sir John Macdonell in his Memorandum: Schröder, 316; Löning, 617; Wessel's History of Roman Dutch Law, 467.

† Pertz. XV., 300; *see* Memorandum by Sir John Macdonell, entitled, "Some Notes on the Legal History of Divorce."

‡ Memorandum of Sir John Macdonell.

§ The various folk laws are reviewed by *Meyrick*, "Dictionary Christ. Ant.," II., 1111. The Codes are discussed by Freisen, "Geschichte des canonischen Eherechts," 776–8, and *Geffcken*, op. cit., 35, 39, 41. *See* lex Romana Visigothorum in the very learned edition of Gustavus Hänel (Leipzig, 1849), pp. 92 95. *See also* the laws derived from the sentences in Paul as to the right to kill a wife taken in adultery (p. 372). *See also* the Memorandum by Sir John Macdonell, p. 33.

‖ O'Curry, "Manners and Customs of the Ancient Irish," I. CLXXV.

¶ Pollock and Maitland, II., 393 (2nd ed.).

* Pollock and Maitland, II., 393; Theodore's "Penitential" (Haddan and Stubbs' "Councils," iii. 199–201); Holdsworth's "History of English Law," II., 78.

† *See* "Welsh Mediæval Law" (The Laws of Howel the Good), by A. W. Wade-Evans (pp. 235–240), ed. 1909.

‡ "Marriage with a wife's sister or a brother's wife was " held lawful until Constantine's law of A.D. 355 (Cod. " Theod. iii. 12)." Roby, vol. I., p. 129.

§ Op. cit., 331, *ff.*, 782. *See* Sac. Conc., vol. VI., col. 1448.

‖ These dates are uncertain. *See* generally as to these Synods, Freisen, op. cit., 782-4; Geffcken, op. cit., 55–7; Esmein, op. cit., II., 64-9. A Canon (XV.) of 755 Concilium Vernense directs all marriages to be public.

¶ Si qua mulier mortem viri sui cum aliis hominibus consiliavit, et ipse vir ipsius hominem se defendendo occiderit, et hoc probare potest, ille vir potest ipsam uxorem dimittere, et si voluerit aliam accipiat (Concilium Vermeriense, Canones V. et VI.; 752 A.D. Pippinus Rex Franc., Sacrosancta Concilia, vol. VI., col. 1657; and Concilium Compendiense, Canons VIII. and X., 757 A.D.; Sac. Conc., vol. VI., col. 1696). The Statutes of St. Boniface (2nd collection, 35) appear to recognise divorce by mutual consent in two cases (Héfélé, vol. 4, pp. 491–2).

must remain unmarried while her husband lives. Again, if either party in the course of wedded life falls into slavery the other is free to marry again. The Council of Compiègne (Canon XIII.) has also a decree to the effect that where by agreement either party enters the cloister the other has the right of remarriage.

So far as England was specially concerned, the Council of Hertford (673), Canon 10, decreed that divorce should not be permitted except on the ground assigned by the Holy Evangel, but should a man "put "away the wife united to him in holy wedlock, and "if he wish to be rightly a Christian, let him not be "joined to another, but remain as he is or else be "reconciled to his wife."* This must be compared with the "Answers of Ecgbriht" (740 A.D.), question 13: "If a lawful marriage be dissolved, by consent of both "parties on account of the (temporary) impotency of "the man or woman, is it lawful for the sound party "(being incontinent) to marry, the impotent party "giving consent, and promising to live in perpetual "continency? The answer was doubtful, but probably "'Yes.'"† The Synodus Romana of 826 (Pope Engenius II.) allowed divorce and remarriage in the case of adultery (Can. 36, Sac. Conc. vol. viii. col. 112).

Nearly a century and a half (950) later the rule of indissolubility is proclaimed by the "Laws of the Northumbrian Priests" (54); the Penitential Canons of 963 (27) are equally strong, and subsequently the Council of Eanham (1009) and others decreed the indissolubility of marriage.‡

By the Ecclesiastical Laws of Howell the Good, of Wales (928),§ however, much more latitude is shown, and the curious regulations as to compensations and fines there laid down show the compromise which force of circumstances compelled the Church to make with the barbarians.

At the Synod of Bourges in 1031 it was declared (Canon 16) that there was no right of remarriage except in the case of adultery (Héfélé, vi., 272); at the Synod of Reïms in 1049, this ground was abandoned (Canon 12, *ibid.*, p. 309), but the Synod of Tours of 1060 (Canon IX., *ibid.*, p. 401) seems to allow the Bishop to grant a divorce with a right of remarriage.

There is, moreover, a curious class of evidence as to actual practice in daily life, apart from the decrees laid down by Councils, in the Pœnitentials, namely, the Manuals designed for the guidance of priests in their daily ministrations. One of the most important of these, that by Theodore of Tarsus,‖ Archbishop of Canterbury and the President of the Council of Hertford, by which as has been seen the strict rule as to the indissolubility of marriage was announced, allows divorce on various grounds. Johnson comments on this inconsistency and says that perhaps in the Pœnitential Theodore speaks of what may be done without direct sin, while in the Canons of the Council the conduct that best becomes a Christian is explained. Theodore, like Chrysostom and Augustine, has two minds on the subject; indeed, like Ecgbriht, he was "very loose as to the point of matrimony."¶

According to Theodore's Pœnitentials in the case of adultery, the husband may repudiate the wife, and, if it be a dissolution of the first marriage, he may remarry at once; even the guilty wife may remarry after a penance of five years, but a wife is forbidden to send an adulterous husband away except to enter a monastery. Again, for malicious desertion on the part of the wife the man may contract a second marriage with the consent of the bishop, and a woman whose husband is in prison can remarry after a year if it be the first marriage that is dissolved. Remarriage is also allowed in case either party is captured in war, and amongst other grounds of divorce the right is given to anyone who has ignorantly married a person in servile condition. Divorce by mutual consent is also recognised. A number of other Pœnitentials containing similar regulations are also known.*

The practice of the Church in England even appears to have extended so far as to recognise divorce by mutual consent: *legitimum conjugium non licet frangi sine consensu amborum* (Pœnit., Theodore, II., c. 12, 7).

This evidence must be borne in mind, because, though the Pœnitentials have not necessarily official sanction, and though the statements in them were sometimes condemned by Councils, yet, as Sir John Macdonell has pointed out, they record the actual practice of the time; and show in a striking way that up to the 9th century the Church permitted in practice great laxity in divorce, in spite of the weighty Councils which decreed the indissolubility of marriage, and divorce *a vinculo* for adultery still is found in the late Eleventh Century.

With the growth of the Canon law† the various decrees of Councils and utterances of Popes and Fathers on the subject of marriage and divorce were being gradually worked into a system of jurisprudence and the more stringent rules laid down gradually assumed their final form, allowing divorce *a mensâ et thoro*, *i.e.*, judicial separation only, for (1) adultery, (2) heresy and apostasy, and (3) cruelty, and abolishing, theoretically at least, all absolute divorce from the Western Church.

The Church also assumed control of divorce procedure which hitherto, it is important to bear in mind, had been a private transaction. It would seem by the 11th century that the Court of the Bishop was gradually becoming the ordinary tribunal for divorce cases.‡ "That eminently Christian king Cnut legislated about "marriage in an ecclesiastical spirit. The adulterous "wife, unless her offence be public, is to be handed "over to the bishop for judgment. The adulterous "husband is to be denied every Christian right until "he satisfied the bishop. The bishop is becoming "the judge of these sinners, and the judge who "punishes adultery must take cognizance of marriage."§ After William the Conqueror had separated the spiritual and lay courts the ultimate result was not in doubt; but there was no haste. In Henry I.'s time the King's Court had still some voice, and it was not until the middle of the 12th century that marriage and divorce were fully under the Canon law. Gratian and Peter Lombard, the masters of the Canon law, finally elaborated the strict ecclesiastical doctrine of divorce, and we see the system at work in England in Richard de Anesty's suit in 1143.

In practice it will be seen that under the Canon law marriages were still dissolved, and the method and subterfuge by which this was done will require to be considered at some length. Richard de Anesty's case in which "a marriage solemnly celebrated in church, a "marriage of which a child had been born, was set aside "as null in favour of an earlier marriage constituted "by a mere exchange of consenting words," proves this. First, it is to be observed that though, as has been stated, divorce *a vinculo* was eliminated from the law of the Western Church, the word "divorce" was still used in the Canons and in two different senses:

* Haddan and Stubbs, "Councils," III., 120-1. *See also* Johnson's English Canons, vol. I., p. 95.

† (Johnson, vol. I., p. 170; Latin text, Wilkins, vol. I., p. 82; Thorpe, p. 320). The Excerptions of Ecgbriht (111-130) are important. The excerption 122 apparently permits in the case of desertion by the wife the husband to remarry with the Bishop's consent after five or seven years.

‡ For details of the Canons of many of the Councils and observations thereon *see* Watkins, p. 364. 394. *See also* Lyndwood's Provinciale (ed. Oxford, 1679), lib. IV., tit. i., de Sponsalibus et Matrimonio (p. 270). Lyndwood, writing early in the 15th century, lays stress on the fact that marriage is a sacrament.

§ Haddan and Stubbs, op. cit., I., 246: Wade-Evans, op. cit., pp. 235-240

‖ This is contained in Haddan and Stubbs, op. cit., III., pp. 173-213.

¶ Johnson's *English Canons*, p. 171.

* References to them are given in Howard, vol. ii., 45. The material sentences of two books of the Pœnitential of Theodore will be found in Haddan and Stubbs (Councils, &c., vol. III., p. 199), who have taken their copy from the existing documents in the library of Corpus Christi College, Cambridge. Johnson also prints these passages (*English Canons*, Part I., p. 94).

† For an account of the growth of the Canon law generally, *see* Maitland's article in "The Encyclopædia of the Laws of England," II., 541; the evidence of Sir Frederick Pollock; and Pollock and Maitland's *History of English Law*.

‡ Pollock and Maitland, II., 367 (2nd ed.); Cnut, II., 53, 54.

§ Geffcken, op. cit., 77-79. Pollock and Maitland ("History of English Law," II., 367) think that the complete ecclesiastical jurisdiction was established in England about the middle of the 12th century.

(1) It was used to designate the judicial declaration of nullity of a marriage which, on account of some impediment, was void or voidable from the beginning.* (2) It was used to designate the "judicial separation" for the three causes above mentioned.†

With regard to the theoretical prohibition of all divorce *a vinculo* by the Canon law, two exceptions always existed. First, if a Christian convert is abandoned by his partner, he is allowed to contract a second marriage‡; and secondly, the theory is evolved that an unconsummated marriage may be dissolved through papal dispensation, or, *ipso facto*, by taking Orders.§ But it was through the abuse of the power to dissolve a marriage on account of some supposed invalidity for consanguinity or affinity that the doctrine of indissolubility was evaded by those who were in a position to do so. Thus throughout the Middle Ages from the time of Gratian there existed a very wide liberty of divorce in our modern sense. Moreover, it must be noticed that, at any rate till the middle of the fourteenth century, the children of a divorced pair could be and frequently were held to be legitimate and capable of succeeding to land.‖

Hence in pre-Reformation times there was in fact the exact modern position: A marries B and has issue; B is divorced and A remarries and has children in the lifetime of B. The issue of both marriages are legitimate. The following cases illustrate the mediæval position. Joan Cryspyn, seised in her own right of certain lands, had two children, Roger and Joan. Roger married Margaret and had a son, Thomas. Five years later a divorce from Roger "was celebrated at the suit of the said Margaret," and then Roger died in the lifetime of his mother. His sister Joan, the wife of Walter de Badeston, on the death of her mother claimed the lands, alleging that Thomas in consequence of the divorce was a bastard. The question was referred to a jury and inquisition made. On 25th October 1320 the Bishop of Bath and Wells in answer to a writ declared that Thomas "was and is the lawful son of the said Roger" and not a bastard.¶

Hence the divorce, though made on the basis of nullity, had the precise effect of a modern divorce. Another case of about the same date illustrates this. Margaret, the daughter of John de Wygeton, claimed her dead father's lands as next heir. Other persons claimed to be next heirs because "a divorce was "pronounced between the said John and Denise his "wife, mother of the said Margaret, because of her "pre-contract with John Paynel." Hence it was argued at the inquisition that Margaret was a bastard. In answer to a writ the Bishop of London held (on St. John Baptist's Day 1320) that Margaret was the lawful daughter of the said John. "This record was "delivered into the Chancery at Westminster July 24th "in the 14th year (of Edward II.) by the hands of Sir "Henry de Scrop, Chief Justice."** Here we have a case in which marriage was held null and void because of a previous contract of marriage, and yet the issue of the second marriage was held legitimate for the purpose of succession to land. No modern State has gone so far as this, even in America. But there was no certainty in the administration of the law. Thus in 1268 Walter de Beauchamp married, in the diocese of Worcester, Alice de Tovy, who was related to him within the fourth degree of consanguinity. Bishop Giffard held that, since at the date of the contract the parties were ignorant of the impediment, the marriage was valid, and the issue legitimate.*

Canon II. of Hubert Walter's Canons, passed at Westminster in the year 1200, shows how narrow the compass of legal marriage was becoming. It says: "Let "not a man contract with a relation of his former wife, "nor a woman with a relation of her former husband; "nor a godson with a daughter of the baptizer, or of "the godfather, whether born before or after."†

The age, indeed, was comparable with the worst Roman period. Indeed in the days of Edward II., a satirist describes the "prodigious traffic" in divorces; any husband having "selver among the clerkes to send" could rid himself of his wife, "bringing her to the constery", with two false witnesses to support his declaration.‡ Sir Frederick Pollock and Professor Maitland, in their History of English Law, state that "spouses who had quarrelled began to investigate their "pedigrees and were unlucky if they could discover "no *impedimentum dirimens*" which would invalidate the marriage;§ and Thwing writes, "The canons "prescribing the prohibited degrees of relationship "were marvels of ingenuity. Spiritual relationships, "those gained in baptism, were recognised no less than "natural relationships, and equally with them served as "barriers to legal marriage.‖ Marriage was prohibited "within seven degrees of relationship and affinity; "and none but the astutest students of the law were "able to unravel so complicated a system. The "annulling of marriages, which had been contracted "within the prohibited degrees, became a flourishing "business of the Church. No exercise of its power "yielded more money, or caused more scandal. So "tangled was the casuistry respecting marriage at the "beginning of the 16th century, that it might be said "that, for a sufficient consideration, a canonical flaw "could be found in almost any marriage."¶

It has, however, to be remembered that, if the marriage though bad was not in fact dissolved, the issue were legitimate. After the Reformation this principle was acted upon, and in the reign of James I. it was held by the courts that the nullity action must be brought in the joint lives of the spouses. This law made the marriage with a deceased wife's sister possible till the passing of Lord Lyndhurst's Act of 1835. That Act abolished voidable marriages in England and Ireland. Such marriages were never recognised in Scotland.**

The Council of Trent (1545 to 1563) finally settled the Canon Law of Divorce; and while preserving the essential features of that law abolished in a large measure from the continent of Europe the scandal of the clandestine marriage or pre-contract as a ground of divorce.

One incident at the Council requires separate mention. The Greek Church (separated finally from the Western in 1054, just after the completion of the Canon Law) has always permitted divorce for the causes with modifications laid down by the Edict of Theodosius II. and Valentinian in 449. The Council of Trent, out of respect, as it is stated, to the views of Ambrose and other Greek Fathers, modified the anathema pronounced against those who taught that marriage could be dissolved and limited, such pronouncement being made only against those who, like the Lutherans, maintained that the Church erred in teaching that marriage could not be dissolved. It should be stated that this modification was made at the instances of the Envoys of Venice, which at that time ruled islands in the Adriatic and Mediterranean inhabited by Greek Christians who had contracted

* *See* Kenn's case, 7, Co. Rep. 42*b* (1607).

† *See* as to this Esmein, op. cit., II., 73, 85–9. We find this as late as the fifteenth century. In 1433 we read (in the Oratio Joannis de Ragusio O.P. de Communione sub utraque specie: Sacrasancta Concilia, vol. XII. 1152*b*), after a reference to the phrase "Nisi ob causam fornicationis," this passage: "Et nihilo minus sancta ecclesia catholica non solum ex hac "causa, sed ex pluribus aliis permittit et facit rationabiliter "divortia fieri, ut patet infrigidis et maleficiatis, de affinibus, "ex causis hæresis, et pluribus aliis causis."

‡ Decret. Grat. II. caus. XVIII. qu. 2 C. 2; and Decretals IV. 19. de divortiis. c. 7. (Howard, vol. ii., 54.)

§ *See* as to this, Freisen, op. cit., 826.

‖ *See* Pollock and Maitland, vol. II., pp. 374–7.

¶ *See* Calendar of Inquisitions. Rolls series (233), 14 Edw. II.

** Inquisitions: Rolls Series (531) 8 Edw. II. Cf. the writ *Cui ante Divortium*, which when issued by the heir assumed the legitimacy of the issue of the marriage. (*See* Rastall's *Entries*.)

* *See* Worcester Episcopal Registers (1268–1301, vol. i., p. CXXXIV., J. W. Willis Bund).

† Johnson's English Canons, vol. II., p. 91.

‡ Percy Society's Publication. (Howard, vol. ii,. 58.)

§ Op. cit., II., 393., note 5. As instances of the mediæval divorces, *see*—

(1) Exch. King's Remembrancer, bundle 7/4, anno 1333.
(2) Chancery Miscellanea. Bundle 15, file 4, &c.

‖ As we have seen above, the conception of spiritual affinity (Cognatio spiritualis) was introduced (Cod. V. 4. 26) by Justinian and adopted by the Church.

¶ Thwing, C. F. and C. F. B., "The Family," 83. For an instance of a so-called divorce by writ and inquisition in the year 1495–6, *see* the case of Margery Wellesbourne (Calendar of Inquisitions, Hen. VII. vol. I., pp. 426–7, Rolls series).

** *See* Howard, vol. II., pp. 94–6. Fraser on *Husband and Wife according to the Law of Scotland*, 50.

second marriages after divorce, in accordance with the law of their Church.*

The position taken by the Roman Catholic Church at the present day is thus stated by Monsignor Moyes, who gave evidence before the Royal Commission at the request of the Archbishop of Westminster:—

"The whole doctrine of the Catholic Church to which I belong may therefore be further summarised in the three following statements. 1. Christian marriage ratified and consummated is one and indissoluble except by the death of one or other of the parties. 2. Christian marriage, ratified verbally, but not consummated, may be dissolved by Church authority. 3. Non-Christian marriage is dissoluble in cases in which one of the parties is converted and the other refuses to dwell peacefully with the convert."†

The Abolition of Papal Authority in England.—The series of Statutes in the reign of Henry VIII. that abolished Papal appellate authority in England in all matters, including all questions of marriage and divorce, forms an important stage in the history of divorce in England, and it is therefore desirable to set out somewhat fully the Statutes in question. The first Act, that of 1532–3 (24 Hen. VIII. c. 12, which is still in force), provides that appeals to Rome in "causes testamentarie, Causes of Matrimony, and Divorces" should be within the King's authority and supplies the appellate machinery. This was followed by an Act of 1553–4 (25 Hen. VIII. c. 19, which is still in force) *inter alia* providing that there should be no appeals to Rome, and that appeals in "causes of matrimonye" should be made in accordance with the Act of 1532. A further Act of 1533–4 (25 Hen. VIII. c. 21, which is still in force) forbids any person to sue for dispensations or licences from the Pope, and substitutes the Archbishop of Canterbury for "causes not being "contrary or repugnant to the holy scriptures and "lawe of God," and a further statute of the same year (25 Hen. VIII. c. 22) regulating the succession to the Crown, in its third section gives a list of the "degrees of mariage prohibited by God's lawes."

The Act 25 Hen. VIII., c. 19 (s. 2), which abolished appeals to Rome, provided machinery for a revision of the existing Canon Law. Acts of 1535–6 (27 Hen. VIII. c. 15) and 1549 (3 & 4 Edw. VI. c. 11) provided commissions to examine the canons in accordance with the Act of 1533–4, and the last of these commissions revised or actually produced the draft code of law known as the "Reformatio Legum Ecclesiasticarum." In 1540 the Marriage Act (32 Hen. VIII. c. 38) *inter alia* abolished the existing law of pre-contracts and declared that consummated marriages between lawful persons were indissoluble notwithstanding any unconsummated pre-contract of matrimony. The law of pre-contracts was revived by an Act of 1548 (2 & 3 Edw. VI. c. 23, which is still in force), and was only abolished (if it is abolished) by implication by Lord Hardwicke's Act in 1753 (26 Geo. II. c. 33).

The pre-contract survives in Scotland where the principles of the Canon Law are still in force, "subject "only to such modifications as it has undergone from "time to time by the application of the rules of "evidence established in that country, and the course "of judicial decisions,"‡ and subject to the provisions of the Scottish Marriage Act of 1856 (19 & 20 Vict. c. 96), making it necessary to the validity of the contract that one of the parties have been resident in Scotland at least 21 days next preceding the ceremony. Subject to this rule, there are three kinds of marriage still recognised in Scotland: (1) Regular marriages before a minister according to custom or Statute and according to the forms for a civil marriage, (2) the marriage *per verba de praesenti*, and (3) the marriage *per verba de futuro, subsequente copulâ*. In this last case the contract must be written or proved by confession on oath. After the Reformation the Commissary Court—representing the old Ecclesiastical Courts—without any statutory authority, began to grant divorces *a vinculo*, and the right to do this was recognised by Statute in 1563. The statutory right to divorce for desertion (which, however, professed only to declare a common law right) followed in 1573.§

* *See* Sarpi's History of the Council of Trent (Courayer's translation, Vol. II., 562–3).

† Q. 22,921.

‡ Hammick, 221. Fraser on *Husband and Wife according to the Law of Scotland* (322, 358, 360).

§ Lord Salvesen's evidence (Q. 6327, &c.).

The following are the Statutes of the reigns of Henry VIII. and Edward VI.:—

The Statute of 1532–3 (24 Henry VIII. c. 12) recites that appeals to Rome in "Causes testamentarie, Causes of Matrimony and Divorces," &c. having caused great trouble and cost, henceforward all causes determinable by any spiritual jurisdiction shall be adjudged within the King's authority (s. 1). Appeals from the archdeacon or his official shall be to the Bishop diocesan of the See. If the case is begun before the Bishop, then the appeal is to the Archbishop of the Province. If the case is begun before the Archdeacon, or the Archbishop, or his commissory, the appeal is to the Court of Arches or audience of the Archbishop and thence finally to the Archbishop. If the case is begun before the Archbishop there is no appeal. In cases touching the King there is a final appeal to the spiritual prelates, abbots, and priors of the Upper House of Convocation (s. 3).

The Act of 1533–4 (25 Hen. VIII. c. 19) is entitled "The submission of the clergie to the Kynges Majestie." It recites that the clergy have acknowledged that the convocations can only be assembled by the King's writ, and can only promulgate canons, &c. by the King's assent and authority; and that existing canons, &c. should be submitted to the judgment of the King and 16 from the Houses of Parliament with 16 of the clergy all to be chosen by the King, who should abolish such as they thought proper. The Act goes on to make the necessary statutory provision for this and provides that no canon shall be put into execution which is contrary to the prerogative or the law of the realm. The Act further provides that there shall be no appeals to Rome, and that appeals in "causes of matrimonie," &c. shall be made in accordance with Statute 24 Hen. VIII. c. 12. All appeals from the Archbishop's court and certain other courts are to be made into the Court of Chancery. Section 7 of this Act runs as follows:—

> "Provided also, that such canons, constitutions, ordinances, and Synodals provincial being already made, which be not contrariant or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the King's Prerogative Royal shall now still be used and executed as they were afore the making of this Act, till such time as they be viewed, searched, or otherwise ordered and determined by the said two and thirty persons, or the more part of them, according to the form tenor and effect of this present Act."*

A further Statute of the same year (25 Hen. VIII. c. 21) forbids any person to sue for dispensation or licence to the Pope and substitutes the Archbishop of Canterbury for the Pope "for causes not being contrary "or repugnant to the Holy Scriptures and lawes of "God," (s. 2) provided that in "causes unwonte" dispensations shall require the approbation of the King or his council.

Section 4 provides that "all children procreated "after solemnization of any marriages to be had or "done by virtue of such licences or dispensations shall "be admitted, reputed, and taken legitimate in all "courts, as well spiritual as temporal," with full power of inheritance.

A third Statute of 1533 (25 Hen. VIII. c. 22) goes on to give (section 2) a list of "the degrees of mariage prohibited by God's lawes." Persons can have no dispensation to marry within the degrees, and if any are already married they shall be separated "from the bondes of suche unlawfull mariage by sentence of the ordinary."

An Act of 1535–6 (27 Hen. VIII. c. 15) gives the King power to name 32 persons (16 spiritual and 16 temporal) to examine the canons and constitutions according to the Statute 25 Hen. VIII. c. 19. This was repealed by an Act of 1543 4 (35 Hen. VIII. c. 16), by which the King was given authority during his life to name two and thirty persons, viz., sixteen spiritual and sixteen temporal, to examine all canons, constitutions, and ordnances, Principal and Synodal, and to establish all such laws ecclesiastical as should be thought by the King and them convenient to be used in all Spiritual Courts. In pursuance of a third Act on the subject passed in 1549–50 (3 & 4 Edw. VI.

* This Act was repealed by 1 & 2 P. & M. c. 8 and revived by 1 Eliz. c. 1. s. 2.

c. 11) the commission was appointed which issued the *Reformatio Legum Ecclesiasticarum*, a revised version of the Code (not now extant) prepared under the Act of 1543. The *Reformatio Legum* is dealt with at length by Sir Lewis Dibdin in the paper that he has prepared on the subject for this Commission.

In 1540 (32 Hen. VIII. c. 38) was passed the Act "For marriages to stand notwithstanding pre-contracts." The preamble runs as follows:—

> "Whereas heretofore the usurped power of the Bishop of Rome hath always intangled and troubled the mere jurisdiction and regal power of this realm of England, and also unquieted much the subjects of the same, by his usurped power in them, as by making that unlawful which by God's word is lawful, both in marriage, and other things, as hereafter shall appear at more length; and till now of late in our Sovereign Lord's time, which is otherwise by learning taught than his predecessors in times past of long time have been, hath so continued the same, whereof yet some sparks be left, which hereafter might kindle a greater fire, and so remaining, his Power not to seem utterly extinct.
>
> "II. Therefore it is thought most convenient to the King's Highness, His Lords Spiritual and Temporal, with the Commons of this realm, assembled in this present Parliament, that two things specially for this time be with Diligence provided for, whereby many inconveniences have ensued, and many more else might ensue and follow."

The Act goes on to say that many marriages that were apparently perfect, valid, and blessed with children—

> "have nevertheless, by an unjust law of the Bishop of Rome, which is, that upon pretence of a former contract made, and not consummate by carnal copulation (for proof whereof two witnesses by that law were only required) been divorced and separate, contrary to God's law and so the true matrimony, both solemnized in the face of the Church, and consummate with bodily knowledge, and confirmed also with the fruit of children had between them, clearly frustrate and dissolved."

The Act further attacks the Roman system of prohibitions and dispensations ("for their lucre by that Court invented") in respect to kindred and affinity since it had led to discord among married persons, "and many just marriages brought in doubt " and danger of undoing, and also many times undone, " and lawful heirs disherited," and—

> "marriages have been brought into such an incertainty thereby, that no marriage could be so surely knit and bounden, but that it should lie in either of the parties' power and arbiter, casting away the fear of God, by means and compasses to prove a pre-contract, a kindred and alliance or a carnal knowledge, to defeat the same, and so under the pretence of these allegations afore rehearsed, to live all the days of their lives in detestable adultery, to the utter destruction of their own souls, and the provocation of the terrible wrath of God upon the places where such abominations were suffered and used.
>
> "Be it therefore enacted . . . that . . . all and every such marriages as within this Church of England shall be contracted between lawful persons (as by this Act we declare all persons to be lawful, that be not prohibited by God's law to marry), such marriages being contract and solemnized in the face of the Church, and consummate with bodily knowledge, or fruit of children or child being had therein between the parties so married, shall be . . . deemed judged and taken to be lawful, good, just and indissoluble, notwithstanding any pre-contract or pre-contracts of matrimony not consummate with bodily knowledge, which either of the parties so married, or both shall have made with any other person or persons before the time of contracting that marriage which is solemnized and consummate, or whereof such fruit is ensued, or may ensue, as afore; and notwithstanding any dispensation, prescription, law, or other thing granted or confirmed by Act or otherwise; and that no reservation or prohibition, God's law except, shall trouble or impeach any marriage without the Levitical degrees; and that no person of what estate degree or condition soever he or she be, shall . . . be admitted in any of the Spiritual Courts within this the King's realm, or any his Grace's other lands and dominions, to any process, plea or allegation, contrary to this foresaid Act."

This Act "concerning pre-contracts and degrees of consanguinite" was repealed by 2 & 3 Edw. VI. c. 23. and 1 & 2 P & M. c. 8. s. 4, and in part revived by 1 Eliz. c. 1. s. 3, as to so much as was not repealed by 2 & 3 Edw. VI. c. 23. Statute 2 & 3 Edw. VI. c. 23. s. 2 repealed so much of Statute 32 Hen. VIII. c. 38 as made indissoluble a consummated marriage which has been solemnized in the Church. In fact, the Act of 1548, in combination with 1 Eliz. c. 1. s. 3, restored the whole doctrine of pre-contracts and directed the ecclesiastical courts to enforce them. Lord Hardwicke's Act of 1753 (26 Geo. 2. c. 33) apparently abolished by implication this doctrine of pre-contracts in England, but, as we have seen, it still survives in Scotland if followed by consummation.

The Survival of the Law of Nullity.—At this point it will be convenient to set out Sir Edward Coke's view of the effect of the Statute of 1540 (32 Hen. VIII. c. 38) on the law of marriage.

In his notes upon Littleton (235*a*) Coke has the following passage:—

> "There bee two kinde of divorces, viz., one *a vinculo matrimonii*, and the other *a mensâ et thoro*. . . . Divorces *a vinculo matrimonii* are these: *causa precontractus, causa metus, causa impotentiæ seu frigiditatis, causa affinitatis, causa consanguinitatis, &c.* . . . It is further to be understood, that many divorces that were of force by the canon law when *Littleton* wrote, are not at this day in force; for by the Statute of 32 Hen. VIII. ca. 38 it is declared that all persons be lawfull (that is, may lawfully marry) that be not prohibited by God's law to marry, that is to say, that be not prohibited by the Leviticall degrees."
>
> "Sir Edward Coke also in his *Institutes* (II. 683) gives us 'an exposition upon the Statute ' of 32 Hen. VIII. cap. 38. concerning what ' Marriages be lawful, and what not.' He says that since the Act various causes of nullity have disappeared, such as:—
>
> (1) Fornication before marriage with kindred of the wife (Chadworth's case, 30 Edw. I.).
>
> (2) Godfather to cousin of wife or godmother to cousin of husband.
>
> "Divorces causa compaternitatis et commaternitatis (called in 1 & 2 P. and M. c. 8 cognatio spiritualis).
>
> (3) Causa professionis.
>
> (4) Causa cognationis legalis, *i.e.*, jure adoptionis et sic de similibus.
>
> (5) Causa præcontractus: but this was restored as a cause for nullity by 2 & 3 Edw. VI. c. 23 and 1 Eliz. c. 1."

Coke then discussed the legality of the marriage of ecclesiastical persons and holds that the Statutes 2 Edw. VI. c. 2 and 5 Edw. VI. c. 12 making the marriages of such persons lawful are still in force. Before the Reformation the marriage of a priest was voidable *causa professionis*, but that of a monk or nun was absolutely void on account of the vow of chastity.

It is interesting to compare with this view the view of the law contained in an undated and unprinted paper of the reign of Queen Elizabeth at the Record Office.* The paper which is entitled "Devorce" deals with the question of the wife's property after divorce, and concludes with the following statement as to causes:—

> "Devorce propter causam castitatis. *Roe in le cace.*

* State Papers, Domestic Series. Elizabeth, vol. 288. Undated papers, No. 10.

"Devorce propter rixa et jurgia. *Roe in le cace de Bek et sa feme.*

"Devorce a mensâ et thoro propter fornicationem. *Roe in le cace W. Shiard et sa feme.*

"Devorce propter pre-contract.

"Devorce propter consanguinity."

The instances of grounds for nullity of marriage given by this anonymous writer and by Sir Edward Coke are important as being the sources of the voidable marriages that existed in English law until 1835. But they also make it necessary to lay stress on the fact that the mediæval system of divorce, the so-called nullity divorce which, as we have seen, was not inconsistent with the legitimacy of the first as well as the second family, long survived the Reformation. This becomes clear when the Visitation articles and Injunctions from 1547 onwards are examined. The following articles are salient but not exhaustive examples of the position between 1547 and 1569. Nor did this system end with the last year mentioned as will appear from the instance of a divorce and remarriage in 1576 given below after the following articles:—*

1. Royal Articles of Edward VI., 1547:—

(61) Whether you know any to be married within the degrees prohibited by the law of God; or that be separated and divorced without any just cause, approved by the law of God. And whether any such have married again.

(This apparently refers to the Act of 1533 prohibiting marriages within the degrees named in Leviticus and forbidding dispensations within these degrees.)

2. Archbishop Cranmer's Articles for Canterbury Diocese (1548). Art. 81 (the same as the article above of 1547).

3. Queen Mary's Articles (1554):—

(9) *Item* that every bishop, and all other persons aforesaid, do foresee that they suffer not any religious man having solemnly professed chastity, to continue with his woman or wife, but that all such persons, after deprivation of their benefice or ecclesiastical promotion, be divorced, every one from his said woman, and due punishment otherwise taken for the offence therein.

4. Cardinal Pole's Articles for Canterbury Diocese (1557):—

(Art. 17.) *Item* Whether any of them (priests) that were under the pretence of lawful matrimony, married and now reconciled, do privily resort to their pretensed wives, or that the said women do privily resort unto them?

5. Interrogatories of 1560 (no Ordinary named):—

(Art. 13.) Whether that any minister or priest, in the time of trouble, hath divorced himself from his wife; and whether his wife hath married to another man since, or no?

6. Archbishop Parker's Diocesan Articles of 1560 and 1563. Parker's Articles of 1560 asked:—

(Art. 21.) *Item* Whether there be any in these parts that have married within degrees of affinity or consanguinity, by the laws of God forbidden; any man that hath two wives, any woman that hath two husbands (the Articles of 1563 add here, "any that being divorced or separated aside have married again"); any married that have made pre-contracts; any that have made privy or secret contracts; any that have married without banns thrice solemnly asked; any couples married that live not together, but slanderously live apart; any that have married in times by the laws prohibited, or out of the parish church where they ought to have the same solemnized.

7. Guest's Articles for Rochester Diocese, 1565:—

(Art. 11.) *Item* Whether ye know any to be married within the degrees of affinity or consanguinity exhibited by the laws of God or that be separated or divorced without the degrees prohibited in the laws of God and whether any such have married again.

8. Parkhurst's Injunctions for Norwich Diocese, 1569:—

(Art. 42.) Whether there be any that hath two wives, or woman that hath two husbands, any married where a pre-contract was to any other, any divorced, or otherwise separated, that married again.

It will be noticed that the first and second of these articles speak of separation or divorce "without a just cause approved by the law of God," and ask if any persons so divorced have married again; that the third article separates a married religious; that the fourth declares by the use of the word "pretensed" that the marriage of priests is a nullity; that the sixth deals in detail with the causes of double marriages. The article of 1565 institutes an inquiry into cases of divorce where there has been no nullity, while that of 1569 again deals with the question of double marriages. It is plain that the pre-Reformation practice had led to a great confusion and that in the second half of the sixteenth century there were grave doubts as to what marriages were binding and what were not binding. The close inquiries made by the bishops and the Crown in all parts of England show that the problem was one of serious difficulty in the daily life of the people. It is clear, moreover, that in certain cases—and it seems possible that these were not only nullity cases—the Church Courts formally divorced married couples *a vinculo*.

The following instance recorded in the register of S. Michael le Belfrey York* is of some importance. First we have in the Wedding Book the following entry:—

"1568. Rychard Cowpland and Bettris Atkinson, the xvj day of Januarie Devorsed by order of lawe, 1576, in the deane and chapt'r courte of the Cathedrall church of Yorke; me Rob'to Burland occulat. teste hmo repudii."

This is followed by an entry as to the remarriage of Beatrix:—

"Thomas Cooke s'vaunte to Mr. Anthony Rookbye. and Beatrix atkinson als Couplande weare maryed together in this p'ish church at lawfull tyme of the day, the bannes first lawfully asked the xxvij th day of January, 1576, the said beatrix being first devorced from Richard couplande, by lawe, and lycensed to marye."

The wife apparently had issue by both marriages (Kateren, christened April 2nd, 1574; and Susane, christened 14th June 1577; Frances, christened 27th July 1578). Beatrix died in June 1619. It is not clear on what ground the second marriage was allowed, though the fact that there were two families by marriages solemnized in church would seem to suggest two good marriages. If this was not a divorce *a vinculo* after a lawful marriage then it must have been an instance of nullity. In considering the nature of divorce it is necessary to keep in mind the fact that the mediæval doctrine of nullity, which had such a wide area of operation before 1535, did not disappear with the Reformation, but existed for some time side by side with the system of parliamentary divorce, and apparently had a far wider vogue than the modern doctrine of nullity. But on the whole the York case of 1576, in view of the facts that the parties were apparently in a humble position, and that the wife had a family by each husband, almost seems to be a case of divorce *a vinculo*. This view is strengthened by a case, the particulars of which appears in the Register (Marriage) of Christchurch, Newgate, Street (1538–1754). It is the entry of a marriage solemnized on November 2nd, 1579, and runs as follows†:—

"John Skynner and Margery Conaway from St. Andrewes in the Wardrap, and having another wyf alive, did penance at Poles Crosse."

This entry seems to suggest that the Church performed the second marriage with full knowledge of a

* See *Visitation Articles and Injunctions of the Period of the Reformation*. Edited by G. Walter Howard Frere (1910).

* Full particulars of which have been supplied by the vicar, the Rev. George H. Stock: the text is also printed in the publications of the Yorkshire Register Society, and this particular entry has appeared in Notes and Queries for March 25, 1911. *See also* Notes and Queries for June 17, 1911, and Athenæum, May 27, 1911, as to the second marriage of John Stawell in 1572.

† Harleian Society Registers, vol. 21, p. 203.

previous marriage, and imposed penance, but did not refuse to marry the parties.

In this period such cases were not uncommon, if we may judge from register entries, in which a man married "the former wife" of another man (this can hardly mean "widow," as the word "widow" is frequently used on the same page as the phrase "the former wife"). Such cases suggest a great confusion in practice between the years 1550 and 1660. To this confusion later reference will be made. It will, however, be convenient to add in this place an item of evidence as to the practice of marriage after divorce in Elizabethan times; this is an attack on the existing practice by Edmund Bunney (1540–1612) in the year 1595. In the year 1610 he issued from Oxford—and a second edition followed in 1613—"a "Treatise of divorce and marrying again, that there "is no sufficient warrant to do so." He was violently opposed to any such practice, and therefore is a credible witness of the practice. The book is dedicated to the Archbishop of Canterbury. In the preface dated from Bolton—Derby, December 13, 1595—he says: "6. Hereupon, when time was, in a Sermon I "briefly noted, and the present occasion did so require, "that the libertie, that in these our daies many doe "take, of divorcing their wives for adulterie and "marrying of others, had not such warrant in the "worde of God as they thought that it had." The "Advertisement to the Reader" gives certain instances and a remarkable example of the views of those in high places. It says that a certain "honour- "able personage, who then was in chiefe place for "the execution of justice here, said the laws of "our country allowed of it, and was contradicted by "some of the council." In view of such a difference of opinion, the ignorant laity and even some church courts might well have regarded divorce *a vinculo* as legal. Bunney was not the only writer. John Reynolds, in 1610, appeared (in a second edition) on the other side, and issued a "defence" of great learning "of the judgment of the Reformed Churches, "that a man may lawfullie not only put away his wife "for adulterie, but also marrie another." It has to be remembered in considering the English practice and the possibility of the church courts granting divorces *a vinculo* without statutory authority that this actually happened at this very time in Scotland. Lord Salvesen in his evidence states that divorce *a vinculo* for adultery was introduced after the Reformation partly by the Scottish courts "and by "public opinion treating the bar which previously "existed to the dissolution of marriage as non-exis- "tent in consequence of the triumph of the re- "formed principles."* This practice was recognised by Statute in 1563 as an existing institution. In England what seems like a similar practice was gradually suppressed.

The Reformers and Divorce.—With the Reformation the rejection by Protestants of the sacramental theory of marriage brought about a great change in the prevailing ideas upon the subject of divorce.

The charges against the Church which we find among the writings of the Reformers were: (1) the fostering of vice by the profession of a too severe doctrine of indissolubility; and (2) the abuse of a jurisdiction exercised by the Church with regard to the annulment of marriages on the ground of having been contracted within so-called forbidden degrees, the effect of which was to open for the rich and powerful an easy door to divorce.†

The Reformers were not, however, by any means agreed upon the remedy for this state of things. It is necessary to consider the views of some of the leading continental Protestants, then those of English birth, which will lead to the discussion of the futile attempt which was made at legislation; some leading cases which arose during the 16th and 17th centuries; and the rise of the practice of private Acts of Parliament, which remained the only means of absolute divorce in England down to 1857.

The Protestant doctrine of divorce was shaped, like the Protestant doctrine of marriage, mainly by Luther. He admitted divorce *a vinculo* upon the two grounds only of adultery and desertion; he also sanctioned temporary separations. The theologians, Brenz, Bugenhagen, Chemnitz, Calvin, and Beza, with the jurists, Kling, Beust, and Schneidewin, all agree with him that absolute divorce should be granted for adultery, but some, like Chemnitz, would discriminate against the woman; malicious desertion is also generally admitted as a cause for dissolution.*

On the other hand, Erasmus, Zwingli, and Bullinger, with Melancthon and others, favoured the more liberal view. All accept the two grounds mentioned, and each admits several other grounds. Zwingli and Bullinger argue that in admitting adultery as a cause of divorce the Scriptures sanction as such all equal or graver offences†; and, according to the Zurich Marriage Ordinance of 1525, "adultery, malicious "desertion, and plotting against the life of a consort "are not regarded as the only causes, but rather as the "standard causes of divorce, and to the judge it is left "to decide what others shall be put by their side. And "not only this, but cruelty, madness, leprosy, are "mentioned as causes which the judge can take into "account."‡ Lambert, of Avignon, holds that when a wife is forced by intolerable suffering to leave the husband who mistreats her, this should be counted as repudiation by the man and not as desertion by the woman.

With no exception remarriage is allowed to the innocent party, but with regard to the guilty party the Protestant reformers were not agreed, and several advocate the summary solution to the question by putting him or her to death.§ The legislation in Protestant countries on the Continent followed in the main the stricter view, allowing divorce usually only for adultery and desertion, but in some instances only for adultery.‖

The English reformers accept the stricter doctrine of the continental theologians above cited, but most of them agree that marriage should be absolutely dissolved for adultery;¶ that this should carry with it the right of remarriage, at least for the innocent party; and that "judicial separation" should be abolished. The following opinions quoted by Sir John Macdonell in his memorandum may be referred to:—Henry Smith, "Preparative to Marriage," 1591: "Divorcement, "which is the rod of marriage, and divideth them which "were one flesh, as if the bodie and soul were parted "asunder. But because all performe not wedlocke "vowes, therefore He which appointed marriage hath "appointed divorcement, as it were, taking our privi- "ledge from us when we abuse it. . . . . The "disease of marriage is adultery, and the medicine "thereof is divorcement. Thus, He which made mar- "riage did not make it inseparable."

Tyndale, in his "Exposition and Notes," says: "If "he may not find in his heart (to forgive his wife) ". . . . he is free no doubt to take another, "while the law interpreteth her dead; for her sin "ought of no right to bind him."

Hooper's opinion is thus expressed: "Thou seest that "the Lord (Matthew, v. 19) giveth licence to divorce for "adultery, and marry again, one soul for infidelity."

Milton's views on the subject are well known, and the famous theologian, Martin Bucer, of Strassburg, who, as a professor at Cambridge, may perhaps be treated as a representative of English Protestant thought, dedicated a book on divorce to Edward VI., in which he advocated an even more liberal system. A translation of this work by Milton is to be found in Milton's Prose Works.

* Lord Salvesen's evidence, Q. 6327.

† Howard, II., 60, 61, where he quotes from "The Judgment of Martin Bucer" in Milton's "Doctrine and Discipline of Divorce," Prose Works.

* The references are given in Howard, op. cit., vol. ii., 62 *ff.*, and *see also* the Memorandum by Sir John Macdonell, p. 34.

† He puts the question, "What," &c. (Werke, VI., 516). Evidence, p. 34.

‡ For Ordinance, *see* Richter, "Beiträge," 6, 7. Howard, op. cit., 64, 65.

§ Richter, op. cit., 45, 46.

‖ References to such legislation are given in Howard, op. cit., 67, 68.

¶ John Howson (1557?—1632, Bishop of Durham), in 1602, however, issued from Oxford a powerful plea for absolute indissolubility, except in case of adultery, entitled "Uxore "dimissa propter fornicationem aliam non licet superin- "ducere" (Copy at Middle Temple Library), and argues that it is not lawful for a divorced wife to remarry. This seems to suggest that the Bishop was attacking an existing practice.

THE REFORMATIO LEGUM ECCLESIASTICARUM AND THE PRACTICE OF DIVORCE, 1550–1600.

Of more importance, perhaps, than the views of these learned persons are the positive recommendations of the commission appointed under the provisions of 3 & 4 Edward VI. cap. 11 to examine the Canons, Constitutions, and Ordinances, with a view of seeing what ought to be retained. The result of the labours of this commission, which was presided over by Archbishop Cranmer, and included Peter Martyr amongst its members, was a draft code, entitled "Reformatio Legum Ecclesiasticarum." This provided amongst many other things, that absolute divorce should be permitted in cases of adultery, desertion after two years, long absence, and "the constant perverseness or fierceness of a husband to his wife." It also proposed that separation *a mensâ et thoro* should be abolished, and provided that no divorce should be allowed without the sentence of an ecclesiastical court. This code never became law. But, whatever the cause, the document remains, in Dr. Cardwell's words, "the mature sentiments of Archbishop Cranmer on the avowed "constitution of the Church of England at that "period"; and has been regarded by some as a statement of what, in the official view of a body of opinion in the Church in England at that time, ought to have been the law on the subject of divorce. On the other hand, Sir Lewis Dibdin, in the memorandum that he has presented to the Royal Commission, says, "the "conclusion seems to me to be inevitable that the "Reformatio Legum, as we have it, so far as the section "on Divorce is concerned, is merely a literary relic "representing the views derived from continental "sources of certain individual Churchmen of great "eminence and influence. These views were no doubt "also adopted by the rank and file of a section of extreme "Protestants in this country, but, except during a few "years of Edward VI.'s reign, were never dominant in "the Church of England. On the other hand, the "opinion that adultery was on biblical grounds a valid "reason for the complete dissolution of marriage seems "to have been widely, I should even say generally, "held by English divines in the latter half of the 16th "century."

Whether the principles represented by this draft code were ever at any period carried into practice in this country as they were in Scotland by the granting of absolute decrees of divorce has been and is much disputed. Sir Lewis Dibdin answers the question in the negative and holds "that the law of the "Church of England as to the indissolubility of "marriage and the corresponding practice of the "Church courts remained unchanged throughout the "period under notice, that is, from before the Reformation until after the present Canons in 1603–4 came "into operation." On the other hand, there are opinions and evidence contrary to this weighty view.

On evidence which can hardly now be considered as conclusive, unless it is amply supplemented, the Divorce Commissioners appointed in 1850 answered the question in the affirmative as regards the period from 1550 to 1602. In arriving at this conclusion, the Commissioners appear to have been impressed with the evidence of Sir John Stoddart given in 1844 before a Select Committee of the House of Lords appointed to consider Lord Brougham's Bill to amend the constitution of the Judicial Committee of the Privy Council, in the course of which, on page 52,* he says: "Therefore I apprehend "that the *Reformatio Legum*, having been published "as a work of authority, although not of absolute "legislative authority, it must have been, and in all "probability was, followed, and that for that reason in "the spiritual courts there were dissolutions of "marriage, because I believe that from about the "year 1550 to the year 1602 marriage was not held "by the Church, and therefore not held by the law, to "be indissoluble." They also cite, in support of their conclusion, the Marquis of Northampton's case referred to below, and the Canons of 1603.

The 105th Canon is as follows:—"Forasmuch as "matrimonial causes have been always reckoned and "reputed among the weightiest, and therefore require "the greater caution when they come to be handled "and debated in judgment, especially in causes wherein "matrimony is required to be dissolved or annulled. ". . . ." The Commissioners lay stress on the words "dissolved or annulled" as supporting their conclusion.*

The 107th Canon is as follows:—"In all sentences "pronounced only for divorce and separation *a mensâ et* "*thoro* there shall be a caution and restraint inserted "in the act of the said sentence, That the parties so "separated shall live chastely and continently, and "neither shall they, during each other's life, contract "matrimony with other persons. And for the better "observance of this last clause the said sentence of "divorce shall not be pronounced until the party or "parties requiring the same have given good and "sufficient caution and security into the court that "they will not any way break or transgress the said "restraint or prohibition." The Commissioners lay stress on the fact that enjoining a prohibitory bond implies that the marriage which the bond was intended to prevent would have been valid.

They refer to the Statute of Bigamy, 1604 (1 Jac. 1. cap. 11), which makes that offence a felony, but in addition to section 2, which deals with an exception in cases of seven years elsewhere, section 3 expressly provides that the Act shall not extend to any person divorced by sentence of the Ecclesiastical Court. Upon this the Commissioners say: "We can hardly suppose "that the Legislature intended to declare in one and "the same breath that bigamy was felony, and yet "that a second marriage after divorce, living the first "wife, was not to be considered in that light, unless it "conceived that the sentence passed in the Ecclesiastical Court had worked a dissolution of the marriage "contract."

It has been conjectured, upon evidence which the Commissioners considered too loose to be authoritative, that the Court of Chancery in early times granted divorces *a vinculo*†; and Sir John Macdonell has collected a few cases of the 17th century where the courts of law, in deciding other matters, seem to have felt some doubts as to absolute divorces.‡ In view of these differences of opinion it will be convenient to consider shortly the legislation, the attempted legislation and law cases, marriage registers, and other evidence bearing upon the question of divorce between 1532 and the beginning of the 18th century. First, attention must be drawn to the Acts dealing with the numerous marriages of King Henry VIII. In 1532 (25 Hen. VIII. c. 22) the marriage with his first wife, Katherine, was "declared void and their separation valid." In 1535 (28 Hen. VIII. c. 7) the marriage with Anne Boleyn was found to be "utterly voyde and "of non effecte; By reason whereof your Highness "was and is lawfully devorced and separated from the "bonds of the said marriage in the lyffe of the said "Lady Anne." In 1539 there is "The dissolution of "the pretensed marriage with the Lady Anne of "Cleves" (32 Hen. VIII. c. 25). It was declared to be "Itselfe nought and of noo force," and the parties were at liberty and pleasure "to contracte matrimony and marry." These divorces were all in form nullity suits, but in fact they were nothing of the sort, and needed an Act of Parliament. In two other cases Henry cut the knot differently, and at his death his then wife survived him.

In 1542 there were two bastardy Acts, which should be compared with the *Roos* case mentioned later: these were an Act (34 & 35 Hen. VIII. cap. XL.) (No. 32) "for the declaration of Elizabeth Burgh's children to be bastards"; and an Act (34 & 35 Hen. VIII. cap. XLIV.) (No. 40) "whereby the Ladye Parre's children be made bastards." The last Act is the first stage of the famous Northampton case. These private Acts were certified into Chancery, and the originals are in the Record Office (the Rolls Chapel Series, Bundle 3 (44 & 50).)

Sir Ralph Sadler's Case (1545).

In 1528, Matthew Barr of Sevenoaks, in Kent, married at Dunmow, in Essex, Elene, daughter of John Michel of Dunmow. There were two daughters born of the marriage. In 1530 Matthew deserted his wife

* Divorce Commission Report.

* Sir Lewis Dibdin lays stress on the Latin as well as the English text of the Canon.

† Report 7.

‡ One of these is "Porter's Case" (1637, Crok. Car. 461).

and wandered away to Wales and Ireland. Elene heard from him three months after his departure, but not again. For a year she worked to earn her living, and then hearing that Matthew was dead she took shelter in Clerkenwell Nunnery. But the Prioress refused to allow her to become a nun, and placed her in the service of Mistress Prior, mother-in-law of the Earl of Essex. There she met Ralph Sadler, who was in the service of the earl. They satisfied themselves after many inquiries that Matthew was dead, and married about the year 1534. In all they had nine children. Two years after the marriage Matthew came to London, and in 1541 he disclosed the fact that he was the first husband. The facts slowly became public, and in 1545 a Commission, consisting of the Archbishop of Canterbury and the Bishops of Worcester and Chichester was appointed "to inquire "into and settle the matter of the marriage of Sir "Ralph Sadler and Helen his consort, which by reason "of a previous marriage between her and one Matthew "Barr is rendered doubtful." (Pat. Roll 785, memb. 18.) This was followed by an Act in the same year to legitimise the issue of Elene and Ralph, and this Act provided that if any divorce should be made between the said Elene and Matthew, she should be reputed a woman sole, as if her marriage with him "had never bene made ne solempnised and as if there "had never bene any contracte of matrimony between "the said Elene and Matthew," and as Elene Michel be enabled during the life of the said Matthew to hold lands in fee simple and all manner of goods and chattels. (Parliament Roll 153(19), 37 Hen. VIII. cap. XXX.* It is suggested that this Act was the model for the Northampton Act and all subsequent private legislation.

We next have on January 9th, 1548, a Bill dealing with adultery which was introduced into the Commons, but it proceeded no further. On March 6th, 1549, a Bill for divorce *vinculo matrimonii* in causes of adultery was introduced, but was not carried forward. In the meantime the Marquis of Northampton's case came up, and pending the discussion legislative action was suspended.

The Marquis of Northampton's Case (1548).

The Marquis of Northampton, brother of Queen Catherine Parr, obtained a decision from the Ecclesiastical Court separating him from his wife. The ecclesiastical divorce was based on the adultery of the wife, who had confessed that her children born since the marriage were not her husband's children. In 1547 or 1548 Lord Northampton petitioned King Edward VI. for a commission of learned men to determine whether he might lawfully marry again, his first wife, the Lady Anne Bourchier, from whom he had been divorced, being still alive.† We have seen that in 1543 his first wife's children ("The Lady Parre's children") had been declared illegitimate by Act of Parliament. Lord Northampton did not wait for the appointment of the commission, but at once contracted another union with Elizabeth, daughter of Lord Cobham. Subsequently a commission of delegates, headed by the Archbishop of Canterbury, was appointed and declared the second marriage valid "because the former contract had been absolutely destroyed" by the first wife's infidelity, and in 1552 this decision was confirmed by an Act of Parliament, "An Acte touching the marriage of the Marquis of "Northampton and the Lady Elizabeth his Wief" (1551–2, Edw. VI. An. 5 & 6)‡; which declared the marriage valid "the former marriage and any decretal, "canon constitution ecclesiastical law statute usage "prescription or custom of this realm to the contrary "in anywise notwithstanding," and "theire children legittimate." It will be noticed that this Act did not divorce the parties, but merely declared them to be already divorced by the ecclesiastical sentence sufficiently to admit of the Marquis marrying again ["being "seperate divorsed and at libertie by the Lawes "of god to marrye."] This Act was subsequently repealed when the Roman Catholic religion was re-established under Queen Mary,* but the second marriage was not invalidated. On the whole the Northampton case is some evidence that the Church could and did sanction remarriage after divorce for adultery.

On 9th March 1552 there was introduced into the House of Lords and read the first time a Bill to the effect that "no Man shall put away his Wife, and marry "again, unless he shall be lawfully divorced before "some competent Ecclesiastical Judge." On 17th March 1552 the Bill was read a second time and committed, and on Sunday, March 19th, it was read the third time and passed, Thomas Thirleby, then Bishop of Norwich, dissenting. On the same day the Bill was brought into the Commons from the Lords (with the Marquis of Northampton's Bill) by Mr. Broke and the Solicitor-General. It was read the first time on March 22nd, 1552, the second time, on the motion of Sir Thomas Smith, on the 30th March. It was re-introduced into the Commons and read the first time on April 5th, 1552, the second time on April 7th, and the third time on April 11th, and passed. It was re-introduced into the Lords on April 12th and read the first and second time, and then it was dropped. This Bill appears to throw some light on the general question in dispute. It assumes that a lawful divorce could be made, involving a right of remarriage, by an ecclesiastical court, and appears to explain the case of Richard Coupland and Beatrix Atkinson and the case of John Skynner and Margery Conaway and the other cases referred to above, as well as the Northampton case, and to confirm Salkeld's note in Foljambe s case. The fact that the Bill was introduced with the Northampton Bill cannot be overlooked.

In 1558–9 (1 Eliz., No. 31) there was "An Act for the "ratification of the marriage between the Duke of "Norfolk and Lady Margaret now his wife and for "the assurance of certain lands for her joynture." In 1585 it was decided in *Bunting* v. *Lepingfield*, 4 Rep. 29a, that a contract *per verba de præsenti*, though not attended by consummation, was sufficient to avoid a second marriage though followed by consummation. In *Webber* v. *Bury*, 5 Rep. 98b (1598), it was held that if a man divorced by reason of perpetual impotency in himself marries again, the issue of the second marriage is legitimate, for the first marriage was dissolved *a vinculo matrimonii*. A voidable marriage continues a marriage till it is dissolved. In 1594 it was decided in the case of *Barrow* v. *Butten* (Tothill, page 81) that in such a case the wife could recover her marriage portion. (*See also* Dyer, 13a.) Henry Rolle (1589?–1656) in his *Abridgment* (pp. 680–1) states (on the authority of year book 47 Edward III., plea 78) that a wife has no right to dower where a divorce is granted on the grounds of pre-contract, consanguinity, affinity, or physical incapacity, but that she has a right to it if the marriage is dissolved *causa professionis*. And he states, moreover, that adultery is a bar to dower, though it does not by the Canon Law or the law of "our church" dissolve the marriage bond. He is clearly basing his view on pre-Reformation law, and it is therefore strange, in view of the decision in *Powel* v. *Weeks* (*infra*), that he should say that divorce for adultery bars dower. It would seem to show that the later view as to the effect of adultery weighed with him. This makes it difficult to dismiss the dictum as to the Elizabethan view given by Salkeld in his report of *Foljambe's Case* (1601). As we have seen, that dictum is confirmed by the Divorce Bill of 1552 and by various cases.

The following are the three notes upon this case:—

(1) *Salkeld's Reports*, vol. 3, p. 137.—"A divorce *a* "*vinculo matrimonii* is a bar of *dower*; but a divorce "*a mensâ et thoro* is not, for the marriage still con- "tinues, and therefore the parties thus divorced cannot "marry again during their joint lives. A divorce for "*adultery* was anciently *a vinculo matrimonii*; and "therefore, in the beginning of the reign of Queen "Eliz., the opinion of the *Church of England* was, "that after a divorce for adultery the parties might

* Record Office Certiorari Bundles, Rolls Chapel Series, Bundle 2 (29).

† State Papers, Domestic, Edw. VI., vol. 2, 32 (p. 5).

‡ The MS. of this Act is at the Record Office, No. 30, Certiorari Bundles, Rolls Chapel Series, Bundle 4, 11.

* 1553, Mariae Ano I. Stat. 2, No. 34. "An Acte for the "repeale of a statute made in the vth year of King Edwarde "the Sixth touching thapproving of the maryage bitwen the "Lorde Marques of Northampton and Lady Elizabeth his "Wief and for the legitimation of their children."

" marry again; but in *Foljamb's case, anno* 4 Eliz., " in the Star Chamber, that opinion was changed; " and Archbishop *Bancroft* [Qu. Whitgift] upon the " advice of Divines, held that adultery was only a " cause of divorce *a mensâ et thoro.*"

(2) *Noy's Reports, p.* 100.—Rye *v.* Fullcumbe (in camera stellata). "F., being divorc'd for the incon- " tinence of the wife, he afterwards marries P., the " daughter of Rye, living the first wife. By the " whole Court that is a void marriage; for the " divorce is not, but *a mensâ et thoro*, and does not " dissolve *vinculum matrimonii.* And by Whitguift, " Archbishop of Canterbury. So is the opinion of " Divines and Civilians." *

(3) *Moore's Reports, p.* 683. — Rye *v.* Fuliambe. "Feb. 13, anno 44 Eliz., in Camera Stellata, it was " declared by all the Court that, whereas Fuljambe " was divorced from his first wife for incontinence of ' the woman and afterwards he married Sarah Poge, " daughter of Rye, in his former wife's lifetime, this " was a void marriage, because the first divorce was " only *a mensâ et thoro* and not *a vinculo matrimonii.* " And John Whitgift, then Archbishop of Canter- " bury, said that he had called to himself at Lambeth " the most sage Divines and Civilians, and that they " had all agreed thereon." † [Trans. from Law French.]

These facts, and the fact that the English divines in the latter half of the sixteenth century (up to *Foljambe's Case* in 1601) widely held the view that adultery was a valid reason for the complete dissolution of a marriage have to be considered in arriving at any definite conclusion as to the practice in Elizabethan times. The Bill "to prevent causeless " divorces and separations of man and wife, and " to continue the rights of lawful matrimony" (introduced into the Commons on December 9, 1606, and rejected on December 16) points to considerable alarm. It seems clear that among the laity there was a general impression that marriage after divorce was moral and legal, and it may be that the clergy took upon themselves to celebrate second marriages after a divorce *a mensâ et thoro* for adultery in view of the opinions of the great divines. In any event the marriage *per verba de præsenti* without any church ceremony was open to divorced persons for what it was worth, and its validity was not likely to be questioned. In Scotland, as we have seen, the general opinion of the reformers and the public was, without any statutory authority, put into force by the ecclesiastical courts; but in England the Commonwealth finally checked these practices, and from the Restoration onwards to 1857 the Legislature alone granted the complete divorce.

Later Cases, 1601–1701.

On February 22nd, 1625, a Bill against Adultery and Fornication was introduced into the Commons and was committed on 4th March 1625, but went no further. A new Bill for the further punishment of Adultery and Fornication was introduced and read the first time in the Commons on 11th May 1626, and the second time on 1st June 1626, when it was committed, but it went no further. On 7th April 1628 a similar Bill was introduced into the Commons and read the first time. On April 22nd, 1628, it was read the second time, and was committed, but was not carried further. On March 3rd, 1647, it was resolved by the Commons that it be referred to the Committee, formerly appointed to prepare an ordinance for the punishment of adultery and incest, to consider of punishing the same; and to bring in an ordinance concerning divorce; and to bring in the said ordinances on the next fast day. On January 19th, 1656, a Bill was ordered to be prepared and presented to the Commons "Concerning Divorces and Alimony; and " on whom if is fit to place the same."

"An Act for illegitimation of the children of the Lady Ann Roos" was introduced into the Lords and passed by the Commons on 29th January 1666–7, and her husband, Lord Roos, subsequently obtained from the ecclesiastical court a divorce *a mensâ et thoro.* But these proceedings were incomplete for his purpose, since, as the Act recites, "there was no probable " expectation of posterity to support the family in the " male line, but by the said John Manners Lord Roos," so a further Act, entitled "An Act for Lord Roos to marry again," was introduced in the Lords and passed by the Commons (31st March 1670).*

It was on the hearing of this case that Bishop Cozen delivered his successful argument in favour of absolute divorce, which, however, is stated by Sir Lewis Dibdin to be "so full of inaccuracies that in the " critical edition of his works the editor gives it up over " and over again, and says it must be misreported." It is wrongly stated in the Divorce Commission Report to have been delivered in the Duke of Norfolk's case, the mistake arising no doubt from the fact that it appears in the volume of State Trials as one of the documents used in the latter case.† In 1690 (1 & 2 Will. & Mary) was passed "An Act to annul " and make void a marriage between *Mary Wharton*, " an infant, and *James Campbell*, esquire," and this was followed by an Act of 1696–7 (8 & 9 Will. III.) " for annulling the marriage of *Hannah Knight*, an " infant, and directing the guardianship of the said " infant." In both these cases the lady had been carried off by force, and it was the better opinion that a marriage by duress was good (*see* Dyer, 13*a*). Hence in the case of Mary Wharton an effort had been made to give her relief by a special clause in the Clandestine Marriage Act, 1690, but as this failed a separate Act was passed (10 H.C.J., 493, etc.; 14 H.L.J., 583, 591).‡

Lewknor's Case, 1689, falls in date between Wharton's case and Knight's case.

Mrs. Lewknor (or Lewkner) eloped and was alleged to be living in open adultery. She petitioned to appear before the Committee of the House of Lords in order, apparently, to deny this. The Act was passed on the application of the husband to illegitimise any issue born during the elopement from him of his wife, against whom a sentence of divorce *a mensâ et thoro* had been obtained, but it did not dissolve the marriage or allow the innocent party to marry again.

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* And *see* Noy's Reports, page 108. Dame Powel *v.* Weeks, 2 James I (1605). "In dower it was resolved, that a divorce " *causa adulterii* is no bar, of dower. Because it is but *a mensâ* " *et thoro* and not *a vinculo matrimonii.* And it was said by " Daniel that an Elopement is not a bar of Dower ad ostium " ecclesiæ. And judgment for the Plaintiff."

In Stephens *v.* Totty, 44 & 45 Eliz. I, Cro. 908, it was held that a divorce *causa adulterii* does not avoid the marriage absolutely, and that the cases which say that the wife shall have again her goods after divorce are to be intended of an absolute divorce *ab initio.* (But *see* the Report in Noy, p. 45.) The undated paper of Elizabeth's time referred to above says: "Yf a man take a woman which hath goodes and marry hir " the husbond may give or sell the goodes at his pleasure " during the marriage, but if they be devorcid then she shall " have hir goodes ayen for the law give the goodes of the wief " to the husbond for cause of the marriage *et cessante causa*, " &c." (State Papers Dom. S. [unprinted], Eliz., vol. 288, 10.) Reference must be made to the mediæval writ *Cui ante divortium*, which issued when the husband aliened "the wife's " lands whereof she was seised in fee simple, tail, or for life, " and after they are divorced, the wife may have this writ to " recover the lands, as she might have the Cui in Vita after " the husband's death. . . . The heir may have sur cui " ante divortium, except his mother had an estate tail, and " then he is put to his formedon (F. N. B. 510) . . . . " In this writ the tenant may plead the divorce repealed " (*Rast. Entr.* Cui Ante divor.)." (See *The Nature and Practice of Real Actions*, by George Booth, 2nd ed., 1811, pp. 188–9.) It is to be observed that this writ assumes the legitimacy of children born of the marriage.

† This case is probably explained by the case of Burdet *v.* Burdet (Year Book 18 Edw. IV. de Ter. Hill. case 28) dealing with the question of bastardy after divorce and by the reference to Glanvil, 44, Bracton, 92, given in Salkeld's Report. It is to be noticed that the courts leaned against separation.

In the case of R. *v.* Lord Lee (Levinz's Reports, vol. 2, p. 128; 3 Salkhead, 138), 26 & 27 Car. II., the court refused to grant Lady Lee a separation despite the violence and cruelty of her husband.

* (*See* Commons Journal.) The MSS. of these Acts are in the Record Office, Certiorari Bundles, Parcel 15, 20; Parcel 15, 21.

† 13, State Trials, p. 1332. The text of the Bishop's speeches "Taken from original papers writ in the Bishop's " own hand" is printed by Macqueen, *see* Practice of Parliamentary Divorce (1842), pp. 544-61, and *see Ibid.*, pp. 472-3.

‡ As to Hannah Knight's case, *see* 11 H.C.J., etc., 753, and 16 H.L.J., 146, etc. As to both cases *see* "Divorce Bills in the Imperial Parliament," by James Roberts (Dublin, 1906), an important work on Irish Divorce Bills.

On January 20th, 1689, John Lewknor petitioned the House of Commons "that Jane, his wife, for her "adulterous violation of her marriage vow, and other "debauched practices, to the dishonour of her family, "hath been by the Ecclesiastical Court divorced from "him: and that in regard, in such her debauched "living, she may have children, which will inherit his "estate, and thereby bring desolation to his family, "and praying, that he may have leave to bring in a "Bill to prevent so great a mischief to him and his "family: *ordered*, that leave be given to bring in a "Bill to illegitimate any children the wife of the said "*John Lewknor* hath had, or shall have, during her "elopement from him." The Bill was read the first time on January 21st, 1689; the second time on January 23rd, and committed to a committee of 40, together with all the members that serve for Kent and Sussex. The committee was empowered to send for persons, papers, and records.* This Bill was dropped, and a new Bill was introduced on 27th March 1690, and received on March 28th. It was read the first time on April 3rd and the second time on April 5th, when it was committed. On 8th April Mr. Harcourt reported from the committee that they agreed to the Bill without any amendments, and it was ordered to be engrossed, and on April 10th read the third time and resolved—"that the Bill do pass: and that the title be, "an Act to illegitimate any child or children, that "*Jane* the wife of *John Lewknor*, Esquire, hath had, "or shall have during her elopement from him. "*Ordered*, that Mr. *Harcourt* do carry up the Bill to "the Lords for their concurrence thereunto."† The Bill was brought up to the Lords by Mr. Harcourt and others on April 10th and read the first time.‡ It was read a second time on April 11th, and committed to a committee of 38 peers, temporal and spiritual (including the Bishops of London, Durham, Winchester, St. Davids, Bangor, Worcester, and Chichester). The wife had petitioned that she might be heard before the Bill was passed, and this petition was on April 11th referred to the same committee as the Bill (p. 460). On April 15th the Bishop of Winchester reported: "that the opinion of the committee is, that the "Bill to illegitimate any child, or children, which "*Jane* the wife of *John Lewknor* hath had, or shall "have, during her elopement from him, do pass as it is, "without any amendment." The House agreed with the committee thereon and the Bill was read a third time, and the question being put, "whether the Bill shall pass into a law," it was resolved in the affirmative (p. 464), and a message sent to the House of Commons by Sir Miles Coke and Mr. Meredeth that the House had passed the Bill (p. 465), and the message is announced to the Commons by the Speaker (H. of C. Journal, vol. X., p. 379). On April 23rd, 1690, the King gave in person his assent to the Bill in the House of Lords.§ In this case the Bishops took an active part in the passing of the Bill.

In the Earl of Macclesfield's case (1697) the help of the Legislature was sought because, in consequence of the opposition set up by the Countess in the Ecclesiastical Court, she contrived to baffle all her husband's efforts to obtain a divorce *a mensâ et thoro*, and it was to remedy a flagrant injustice that the Act was passed. At the same time, it was considered a novel proceeding to pass an Act of this nature before a sentence of divorce *a mensâ et thoro* had been obtained in the Ecclesiastical Court, and a protest was entered by certain of the Lords.

The Duke of Norfolk's case (1700) was also one where a sentence of divorce had been refused by the Ecclesiastical Court, and an Act was passed to remedy the injustice: "An Act to dissolve the Duke of Norfolk's "marriage with the Lady Mary Mordant and to enable "him to marry again.‖"

In 1701 came the first separation (as apart from divorce) Act: "An Act for separating James Earl of "Anglesey from Katharine Countesse of Anglesey his "wife for the cruelty of the said Earl."* The Act made elaborate provisions as to the portion (16,500*l.* beside jewels) brought into settlement by the Countess. This lady subsequently married the Duke of Buckinghamshire. Sir John Dillon's case in 1701 should also be recorded. In this case Lady Dillon was represented before the House of Lords by solicitor and counsel, and witnesses were called. This is the beginning of the judicial method of legislation which lasted till 1857.

Box's case (1701), as the Divorce Commissioners in 1853 point out, was the first case where, without any special circumstances, the Legislature granted a divorce *a vinculo* after sentence in the Arches' Court.†

Summary.

A few words summarising the conclusions arrived at in the above paragraphs are necessary.

It has been seen that, from the earliest times onwards in the Greek world the idea of divorce and remarriage, at the instance (with various restrictions) of either party to a marriage or of the parents of the parties, was fully recognised; that in the Roman world from the age which preceded the Twelve Tables there was a formless marriage of which the essence was cohabitation and that this marriage could be freely ended with a right of remarriage subject to checks imposed by considerations arising from questions of property, and later, from about the Christian Epoch, by statutory checks on one-sided divorce; that in the Jewish peoples the earlier ideas of perfectly free divorce was checked by the formalities introduced in the Deuteronomic age, and that though in the time of our Lord divorce was regarded as a concession to the weakness of human nature, yet divorce was then, as always, fully recognised as a necessity in certain cases and as involving the right and perhaps the duty of remarriage; that the Church in various parts of the Roman world was subject to the influence of Greek, Roman, Hebrew, and Germanic ideas on the subject of marriage and divorce and evolved its law of marriage under these influences combined with the recorded views of Our Lord and St. Paul on the subject.

It has been seen that the Church accepted in the East, with comparatively few modifications, the law of the Eastern Empire on the subject of marriage and divorce; that in the West she accepted (for many centuries) the Roman law of a formless marriage as modified by the Western Codes, which combined the old Roman law with local usages, but that on the question of divorce fundamental differences of opinion among the most profound theologians existed, and that these differences led to uncertain local practice on the question, until late in the eleventh century the law of absolute indissolubility of marriage was made universal subject to an elaborate system of modifications which, in fact, rendered remarriage after the dissolution of marriage possible. These modifications involved important changes in the ancient formless marriage; cohabitation was no longer necessary to the proof of marriage; consent only was necessary by "words of the present tense"; and every marriageable person was ringed by a Taboo law forbidding intermarriage with a vast class of relations by blood or by affinity, natural or spiritual. It is true that relations by adoption were no longer in practice, though they were in theory, barred, but Justinian's invention of the doctrine of spiritual affinity more than took their place. The result was that there were few marriages incapable of attack; a pre-contract or a spiritual affinity could almost always be found. In England the common law courts boldly met the difficulty of a position which involved the possibility of bastardy arising at any time. It invented the doctrine of possessory marriages, with the result that a man or woman could and often did marry twice and have two legitimate families during the lifetime of two spouses. The abuses that necessarily sprang from the mediæval canon law of marriage were for the moment checked in England by the Act of 1540, which abolished divorces on the ground of

* H. of C. Journal, vol. X., pp. 336, 338, 339, 340.
† H. of C. Journal, vol. X., pp. 357, 358, 365, 368, 371, 373.
‡ H. of L. Journal, vol. XIV., p. 458, 460.
§ H. of C. Journal, vol. X., p. 386; H. of L. Journal, vol. XIV., p. 472. Private Act: Title in Public General Statutes (2 W. & M.).
‖ Private Act: Title in Public General Statutes (9–12 Will. III.).

* The MS. Act is in the Record Office (Certiorari Bundles, Chancery Rolls Chapel Office, Parcel 16, 2).
† 13 State Trials, 1283. The MS. of the Act is to be found in the Record Office Certiorari Bundles, Chancery Petty Bag Office, Parcel 9, Roll 82 (12 & 13 Will. III): "An Act to dissolve the marriage of Ralph Box."

pre-contract, and were permanently checked in Catholic Europe by the provisions of the Council of Trent (Sess. xxiv. c. i.) making clandestinity an invalidating impediment to marrrage whenever the decree *Tametsi* had been duly promulgated. In England, however, pre-contracts were revived as a ground of divorce by a Statute of 1548, and the only improvement of the law produced by the Reformation in England was the abolition of certain grounds of nullity.

On the other hand, a new confusion was introduced by the view of many reformers and divines that adultery was a ground for divorce *a vinculo*, and during the second half of the sixteenth century this view carried much weight in English practice. The definite views of English theologians, various Diocesan Articles, cases like the Northampton case, the Atkinson case. and the Conaway case, the Bill of 1552, providing that "no man "shall put away his wife, and marry again, unless he "shall be lawfully divorced before some competent "ecclesiastical judge," the definite statement as to the practice of divorce and remarriage contained in Edmund Bunney's pamphlet written in 1595, the form of the Canons of 1603, various marriage registers, and Salkeld's dictum, are evidence of this confusion. The Diocesan Articles, the Bill of 1552, and the above-mentioned pamphlet, seem to indicate that the laity were regarding adultery as *ipso facto* destroying marriage, and in such cases they remarried in or out of Church after formal divorce, or without any formal divorce at all, on the ground that the original formless marriage had ceased to exist. The Bill of 1552 recognised the right of the Ecclesiastical Courts to grant a licence for remarriage, and was intended to forbid the existing practice of remarriage without divorce and licence. The Canons of 1603–4 seem to be further evidence of this. The Canons ignore the divorce *a vinculo*; the Church had at last made up its mind definitely to forbid such divorces and to create machinery to prevent separated persons contracting second marriages. These canons are not inconsistent with a period in which the Church courts sanctioned remarriage after divorce. and seem to indicate that there may have been such a period. The Statute of Bigamy (1604) also lends weight to this view, while the evidence of Edmund Bunney makes it clear that up to 1595 remarriage after divorce was a known practice. The Bill against Divorce of 1606, moreover, must be taken into account. Indeed, there is no period in the history of England previous to the Commonwealth during which a second marriage of complete validity was either impossible or even impracticable. But the mind of the Church in England was at last convinced that there could be no divorce *a vinculo*, and after the Restoration the Legislature alone, acting *ad hoc*, could end a marriage unless it was ended under those laws of nullity which continued to make many marriages uncertain until at any rate the year 1753. Thus it was only for a period of about two centuries—from 1660 to 1857—that the absolute doctrine of indissolubility of marriage was in force in England. In the first of these centuries the old law of nullity and of pre-contract still made marriage, in fact, dissoluble in many cases where hardship demanded relief. and we may therefore say that it was only from 1753 to 1857 that the doctrine of indissolubility was really effective and incapable of any evasion, save the evasion afforded to the rich by the Legislature and to all by the closely limited law of nullity still in force.

J. E. G. DE MONTMORENCY.

APPENDIX II.

CRANMER'S "REFORMATIO LEGUM ECCLESIASTICARUM."*

DE ADULTERIIS ET DIVORTIIS.—CONCERNING ADULTERY AND DIVORCE.

Cap. I.—*Adulteria severe punienda esse.*

Turpitudo tam horribilis adulteriorum est, ut aperte decalogi praecepto confossa sit, et etiam veteribus divinis legibus per Mosen latis publica populi lapidatione obruta et consepulta esset: Denique iure civili etiam capite plecteretur. Rem igitur Deo tam odiosam et a sanctissimis maioribus nostris singulari cruciatu crucifixam, Ecclesiastici iudices nostris non debent sine gravissima poena dimittere.

I.—*That Adultery ought to be severely punished.*

So heinous is the guilt of adultery that it is attacked in expressed terms by one of the Ten Commandments; and also, under the ancient divine laws promulgated through Moses, it was punished by the culprit's being publicly stoned to death by the people and buried beneath the stones; while finally by the civil law also it was punished with death. It follows therefore that a crime so hateful to God and visited by our pious forefathers with a punishment specially appropriated to it, ought not to be passed over by our Ecclesiastical Judges without the most condign punishment.

Cap. II.—*Ministri de Adulterio convicti quomodo puniendi sunt.*

Ordiamur ab Ecclesiarum ministris, quorum vitae praecipua quaedam integritas esse deberet. Itaque si quis ex illis adulterii, scortationis, aut incestus convictus fuerit, si propriam habuerit uxorem, omnes eius opes, et bona devolventur ad eam, et ad liberos, si qui sint ex ea, vel ex aliquo priore matrimonio legitime nati. Si vero nec suam uxorem nec liberos habeat, omnes eius facultates arbitratu iudicis, vel inter pauperes dispertientur, vel in alia pietatis officia conferentur. Deinde si quod illi beneficium fuerit, postquam adulterii vel incestus, vel scortationis convictus fuerit, ex eo tempore protinus illud amittat, nec illi potestas ullum aliud accipiendi. Praeterea vel in perpetuum ablegetur exilium, vel ad aeternas carceris tenebras deprimatur.

II.—*How Ministers who have been convicted of adultery ought to be punished.*

Let us begin with Church Ministers, whose lives ought to be characterised by especial rectitude. If, therefore, any one of them be convicted of adultery, fornication, or incest, if he has had a wife of his own, all his goods and property shall pass to her and to the children, whether born of her, or the lawful fruit of any previous marriage. Should he, however, have neither wife nor children of his own, all his property shall, at the pleasure of the judge, either be divided among the poor, or applied to some other works of piety. In the next place, should he have held any benefice, he is, after being convicted of adultery, incest, or fornication, to lose it as and from that time, and to have no power of receiving any other. Furthermore, he is either to be condemned to perpetual banishment, or to be consigned to the darkness of the dungeon for life.

* In this translation the word "party" is used to imply either husband or wife, and the masculine pronoun, when replacing it, in the same sense.—C. H. W. (Translator).

Cap. III.—*Laicus quomodo puniendus.*

Laicus adulterii damnatus uxori suae dotem restituito. Deinde bonorum universorum dimidiam partem eidem uxori concedito. Praeterea vel in perpetuum exilium ito, vel aeternae carceris custodiae mancipator.

III.—*In what manner the layman is to be punished.*

The layman convicted of adultery is to restore his wife's dowry to her. He is also to give up to her the half of all his goods. Furthermore, he is either to be condemned to perpetual banishment or committed to prison for life.

Cap. IV.—*Uxores sive ministrorum, sive laicorum, quomodo puniendae.*

Uxores ex contraria parte, tam laicorum quam ministrorum, si crimen adulterii contra illas probatum fuerit, et iudex adversus illas pronunciaverit, dotibus carebunt, et omnibus emolumentis quae vel ullo Regni nostri iure, vel consuetudine, vel pacto, vel promisso poterant ex bonis maritorum ad illas descendere, tum etiam vel in sempiternum exilium eiicientur, vel perpetuae carceris custodiae mandabuntur.

IV.—*In what manner wives, either of ministers or of laymen, are to be punished.*

On the other hand, wives, whether of laymen or of ministers, if the crime of adultery be proved against them and the judge give his decision against them, shall be deprived of their dowries and of all benefits which might accrue to them from the property of their husbands, either under any law of our realm, or by custom, or contract, or covenant; and shall, moreover, either be condemned to perpetual banishment or imprisoned for life.

Cap. V.—*Integra persona transit ad novas nuptias.*

Cum alter coniunx adulterii damnatus est, alteri licebit innocenti novum ad matrimonium (si volet) progredi. Nec enim usque adeo debet integra persona crimine alieno premi, coelibatus ut invite possit obtrudi, quapropter integra persona non habebitur adultera, si novo se matrimonio devinxerit, quoniam ipse causam adulterii Christus excepit.

V.—*The innocent party may contract a fresh marriage.*

When one of the parties has been convicted of adultery, the other, being innocent, shall (if desirous), be allowed to proceed to a fresh marriage. For the innocent party ought not to suffer for another's crime to such an extent that celibacy should be forced upon him against his will, and, therefore, the innocent party is not to be considered guilty of adultery if he bind himself by a fresh marriage, since Christ, himself, excepted adultery as a reason.

Cap. VI.—*Reconciliationem esse optandam.*

Quoniam in matrimonio summa coniunctio rerum omnium est, et tantus amor quantus potest maximus cogitari, vehementer optamus ut integra persona damnatae veniam indulgeat, et illam ad se rursus assumat, si credibilis melioris vitae spes ostendatur; quam animi mansuetudinem licet nullae possint externae leges praecipere, tamen Christiana charitas saepe nos ad eam adducere potest. Quod si damnata persona non possit ad superiorem conditionem admitti, nullum illi novem matrimonium conceditur.

VI.—*The desirability of reconciliation.*

Since in matrimony there is the closest possible union, and the highest degree of love that can be imagined, we earnestly desire that the innocent party should forgive the guilty and take him back again should there seem to be any reasonable hope of a better way of life; and although this forgiving disposition cannot be learnt from any external laws, nevertheless Christian charity may often guide us to it. But should it be impossible for the guilty party to be allowed to renew the old relations, no fresh marriage is permitted him.

Cap. VII.—*Nemo coniugem arbitratu suo potest relinquere.*

Magna res est, et ingentem affert totius familiae perturbationem, cum uxor a viro distrahitur. Quapropter adulterii respectu, nemo suam a se coniugem authoritate propria removeat, et aliam adsciscat, nisi iudex Ecclesiasticus totam causam rite prius cognoverit et definiverit. Quod si facere quispiam ausus fuerit, ius omne agendi adversus coniugem amittat. Iudex autem quoties alterum coniugem adulterii condemnat, alteri sincerae personae libertatem denunciare debet ad novum matrimonium transeundi, cum hac tamen exceptione, certum ut tempus assignet in quo superiorem ad coniugem (si velit) redire possit; quod si tempore iam absumpto recuset facere, tum ad aliud matrimonium descendere potest. Et hoc tempus quod iudex indulgebit, omnino volumus anni spatio vel sex mensibus definiri.

VII.—*No husband or wife may abandon the other of his or her own free will.*

The separation of husband and wife is a serious matter, and brings about grievous disturbance of the whole family. Wherefore, with respect to adultery, no one may put away his wife on his own authority and take another, unless an ecclesiastical judge shall first have duly examined the whole case and given his decision. But if anyone should dare to do this, he is to lose all right of action againt his wife. Whenever the judge convicts either husband or wife of adultery, he must give notice to the other, the guiltless party, of his freedom to proceed to a fresh marriage; but with this reservation, that he shall fix a certain time in which the injured party may (if desirous) return to his former marriage partner, and if he should refuse to do this on the expiry of the period, he may then contract another marriage. And we explicitly decree that this period which the judge shall grant, shall be limited by the space of a year or possibly six months.

Cap. VIII.—*Divortium propter desertum matrimonium.*

Cum alter ex coniugibus aufugerit, seque abalienarit ab altero, si persona absens possit inveniri, consiliis, hortationibus, et poenis cogatur ut ad coniugem se rursus adiungat, et una cum illo convenienter vivat; quam ad rem si nulla ratione potest adduci, contumax in eo persona debet accipi, legumque divinarum et humanarum contemptrix: et propterea perpetuae carceris custodiae dedatur, et deserta persona novarum potestatem nuptiarum ab Ecclesiastico iudice sumat. Cum autem contumax non possit absens investigari nec erui nec locus ullus in hoc crimine levitati vel temeritati relinquatur; Primum absentem personam nominatim requiri volumus, illa iuris formula, quam viis et modis appellant: quo tempore si se non ostenderit, aut eius

VIII.—*Desertion a ground for Divorce.*

When either of the parties deserts and withdraws himself from the other, if the absent party can be found, advice, exhortations and penalties are to be employed to compel him to return to his marriage partner that they may live harmoniously together; if he cannot in any way be induced to adopt this course, he is to be considered a contumacious person in the matter, and a scorner of divine and human laws, and for that cause he is to suffer perpetual imprisonment, and the deserted party may claim the right, from the ecclesiastical judge, to contract a fresh marriage. But when the contumacious person, being absent, cannot be found, or his whereabouts ascertained, and is clearly guilty of more than light and heedless behaviour, then it is our will

aliquis vicarius qui causam eius velit agere. Iu lex illi biennium vel triennium indulgebit in quo persona possit absens se repraesentare; quo tempore consumpto, si se ipse non sistat et iustas afferat absentiae tam diuturnae causas, destituta persona nuptiarum vinculis liberabitur, et novum sibi coniugem (si velit) sumat. Desertrix autem persona, si iudicio iam peracto novisque consequutis nuptiis, sero, post biennii vel triennii spatium expletum sui potestatem fecerit, in aeternas carceris tenebras detrudatur, et secundum matrimonium plenissimo iure valeat.

that the absent person be first summoned to appear by name, according to the form of legal procedure, known as *viis et modis*, and if, on this being done, no appearance is entered either by him personally or by anyone acting on his behalf and willing to plead his cause, then the judge shall grant him a stay of two or three years, during which it is to be competent for the absent party to come forward. On the expiry of this period if he does not appear himself and adduce just causes for so long an absence, the deserted person shall be freed from the bonds of matrimony and (if desirous) allowed to marry again. But if, when the proceedings are at an end, and a fresh marriage has taken place, the deserting party should, when too late and after the expiry of the two or three years, come forward, he is to be thrust into the darkness of the dungeon for life, and the second marriage shall be entirely legal.

Cap. IX.—*Divortium propter nimis longam coniugis absentiam.*

Quando non aufugerit coniunx, sed militiam aut mercaturam aut aliquam habet huiusmodi legitimam, et honestam peregrinationis suae causam, et abfuerit diu domo, nec illius vel de vita vel quicquam certo sciatur, largientur alteri coniugi iudicis (siquidem hoc ab illis requirat) bienii vel triennii spatium in quo mariti reditum expectet. Quo tempore toto si non revertatur, nec de vita possit illius aliquid esse explorati, cum diligentissime de ea fuerit interim perquisitum, alteri coniugi novas concedi nuptias aequum est; cum hac tamen conditione, prior ut maritus si tandem se repraesentet, uxor illum rursus ad se recipiat, si quidem ostendere possit culpa sua factum non esse quod fora stam diu peregrinatus sit; tantam enim et tam longi temporis absentiam nisi plena magnaque cum ratione possit excusare, custodiam in perpetuam carceris dimittatur, nullum ad uxorem reditum habeat, et illa secundis in nuptiis rite permaneat.

IX.—*The unduly protracted absence of the husband a ground for Divorce.*

When the husband has not deserted, but has military service or his business as a merchant or some legitimate and honourable reason of this sort for travelling abroad, and has been absent from home a long time and nothing is certainly known either about his being alive or in any other way, the judges shall fix for the wife (if indeed she should ask this from them) a space of either two or three years during which she is to await her husband's return. Should he not come come back during the whole of this time, and if it should be impossible to obtain any information as to his being alive, although the most diligent inquiry has been made in regard to this in the meanwhile, it is right that the liberty to contract a fresh marriage should be granted to the wife, but with this condition, that if in course of time the first husband should return, the wife is to take him back to her, provided he can prove that his having stayed so long abroad was not by his own fault. For unless he should be able to explain so serious and lengthy an absence by some full and sufficient reason, he is to be imprisoned for life and have no right of return to his wife, and she is to continue legally in her second marriage.

Cap. X.—*Inimicitiae Capitales divortium inducunt.*

Inter coniuges si capitales intercedant inimicitiae, tamque vehementer exarserint, ut alter alterum aut insidiis, aut venenis appetat, aut aliqua vel aperta vi, vel occulta peste, vitam velit eripere, quamprimum tam horribile crimen probatum fuerit, rite in iudicio divortio volumus huiusmodi personas distrahi: maiorem enim coniugi facit iniuriam persona, quae salutem et vitam oppugnat, quam ea quae ex consuetudine se coniugis eximit, aut corporis sui potestatem alteri facit. Nec inter illos ullum consortium esse potest, inter quos capitale periculum cogitari coepit et metui. Cum igitur una non possunt esse, iuxta *Pauli* doctrinam dissolvi par est.

X.—*Deadly hostility a ground for Divorce.*

If deadly hostility should arise between husband and wife, and become inflamed to such an intensity that one attack the other, either by treacherous means or by poison, and should wish to take his life in some way, either by open violence or by hidden malice, we ordain that, as soon as so horrible a crime be proved, such persons should be by law separated by divorce in the courts: for the person does greater injury to his marriage partner who attacks health and life than the one who separates himself from the other's society, or commits adultery with another. For there cannot be any sort of fellowship between those who have begun the one to plot and the other to dread mortal harm. When, therefore, they cannot live together, according to the teaching of *Paul*, it is right that they should be separated.

Cap. XI.—*Malae tractationis crimen tandem divortium inducit.*

Si vir in uxorem saeviat, et acerbitatem in eam nimiam factorum et verborum expromat, quam diu spes ulla placabilitatis est, cum illo iudex Ecclesiasticus agat, nimiam ferociam obiurgans, et si non potest monitis et hortationibus proficere, pignoribus oblatis, aut fideiussoribus acceptis, eum cavere compellat de nulla vehementi coniugi inferenda iniuria, et de illa tractanda quomodo matrimonii intima coniunctio postulat. Quod si ne pignoribus quidem, aut fideiussoribus coerceri potest maritus, nec asperitatem velit isto modo deponere, tum capitalem illum coniugis inimicum esse existimandum est, et illius vitam infestare. Quapropter divortii remedio periclitanti succurrendum erit, non minus quam si vita manifeste fuisset oppugnata. Nec tamen praeterea iuris dempta est potestas coercendi uxores quibus modis opus fuerit, si rebelles, contumaces, petulantes, acerbae sint et improbae, modo rationis et

XI.—*The crime of ill-treatment, if prolonged, a ground for Divorce.*

Should a man be violent to his wife and display excessive harshness of word and deed in his dealing towards her, as long as there is any hope of improvement, the ecclesiastical judge is to reason with him, reproving his excessive violence, and if he cannot prevail by admonitions and exhortations, he is to compel him by giving bail or by submitting to sponsors to give security, that he will not inflict any violent injury on his wife, and that he will treat her as the intimate union of marriage requires. But if, however, the husband cannot be restrained, either by bail or sponsors, and refuses to abandon his cruelty by these means, then he must be considered his wife's mortal enemy and a danger to her existence. Wherefore she, in her peril, must be helped by the remedy of divorce, no less than if her life had been openly attacked. On the other hand, however, the power given by the law is

aequitatis fines mariti non egrediantur. Et cum in hoc, tum in his superioribus delictis hoc teneri placet, ut solutae personae novas (si velint) nuptiarum conditiones legant, convictae vero priorum criminum vel exiliis perpetuis, vel aeterna carceris custodia plectantur.

not abrogated, of restraining wives in whatever ways are necessary, should they be rebellious, obstinate, petulant, scolds, and of evil behaviour, provided that the husband does not transgress the limits of moderation and equity. Both in this and in the above-mentioned offences it is our will that this principle should be followed, that parties thus set free (if desirous) may contract a fresh marriage, while those convicted of the previous crimes are to be punished by perpetual exile or imprisonment for life.

Cap. XII.—*Parvae contentiones, nisi perpetuae sint, divortium non inducunt.*

Si minores quaedam contentiones, aut offensiones obrepserint in matrimonio, *Pauli* sententia moderatrix earum esse debet, ut aut uxor marito se reconciliet, quod omnibus poenarum et hortationum ordinariis, et extraordinariis viis procurari debet, aut absque novo coniugio maneat, id quod et viro pariter faciendum statuimus.

XII.—*Slight disagreements, unless permanent, no ground for Divorce.*

If trifling disagreements or grounds of offence creep into the marriage life, the words of *Paul* should act as a check upon them, namely, that either the wife should be reconciled to the husband, a result which ought to be sought after by all ordinary and extraordinary methods of penalties and exhortations, or she is to be debarred for the future from a fresh marriage, a penalty which we decree to be equally binding on the man.

Cap. XIII.—*Perpetuus morbus non tollit matrimonium.*

Si forte coniugum alteruter perpetuum aliquem morbum contraxerit, cuius nulla levatio potest inveniri, tamen matrimonium in omnibus huiusmodi difficultatibus perdurabit. Quoniam hoc unum esse debet praecipuum et eximium matrimonii commodum, ut multa mala mutuis coniugum officiis sedari, lenirique possint.

XIII.—*Incurable disease does not annul marriage.*

If by chance either of the parties shall have contracted any incurable disease for which no alleviation can be found, the marriage will, nevertheless, hold good in spite of all difficulties of this kind. Seeing that this, above all, ought to be the principal and distinguishing advantage of matrimony, that many troubles may be soothed and alleviated by mutual acts of kindness on the part of the marriage partners.

Cap. XIV.—*Durante lite quomodo rea persona sustentabitur.*

Quoniam saepe magnam controversiam habent, et longissimi sunt temporis lites adulteriorum, veneficiorum, capitalium insidiarum, et malae tractationis, vir uxorem interim honestis et convenientibus impensis sustentet, habita ratione dignitatis et conditionis in qua est.

XIV.—*In what manner the defendant is to be supported during the lawsuit.*

Since cases involving charges of adultery, poisoning, mortal treachery and ill-treatment frequently entail serious controversy and are of very great length, the man is in the meantime to maintain his wife by a seemly and fitting allowance, account being taken of the rank and circumstances in which she is.

Cap. XV.—*Poena falsae accusationis.*

Multorum libidines huiusmodi pruritum habent, ut nova subinde matrimonia consectentur, et ad varias uxores devolare concupiscant. Quapropter falsas innocentibus calumnias struent adulteriorum, et aliorum huius generis criminum, nisi sceleribus illorum supplicium acerbitate fuerit occursum. Itaque si vir uxorem adulterii, vel veneficii ream fecerit, et post causa cadat, dimidia bonorum pars ad uxorem sevocetur. Nec in illis vendendi, distrahendi, legandi, permutandi, donandi, vel alienandi quacunque ratione ius ullum habeat, nisi uxor in id consentiat. Et uxor ex altera parte si maritum adulterii, vel veneficii, capitalis iniuriae vel malae tractationis postulaverit, et litem amittat, dote primum careat; Deinde orbetur omni emolumento quod iure per maritum debuit ad illam pervenire, nisi maritus illi sponte voluerit aliquid aspergere; postremo matrimonium inter illos, ita ut erat, integrum conservetur.

Si non coniunx coniugem, sed alterum ex his externa quaedam persona reum faciat, et in iudicio succubuerit, Ecclesiasticus iudex illum arbitratu suo, magna tamen et acri poena feriat, et etiam coniugi satisfaciat cui damnum dedit. Denique calumniatores huiusmodi nec ad Ecclesiam redeant, nec admittantur ad sacramenta, nisi famam eius personae, quam calumnia et mendacio dedecoraverunt plene restituerint quantam possint; et paenitentia scelere digna perfuncti fuerint. Et has in hoc genere poenas omnibus sive laicis sive clericis communes esse volumus.

XV.—*The penalty for false accusation.*

The sensual desires of many men have a craving of this character, that they pursue a succession of fresh marriages and long for a constant change of wives. Wherefore they will devise slanderous charges of adultery and other crimes of that kind against the innocent, unless the punishment for their offences is made sufficiently severe to act as a deterrent. Therefore, if a man shall charge his wife with adultery or poisoning, and if subsequently the case fail, then the half of his property is to be assigned to the wife. Nor shall he in any circumstances have any right of selling, dividing, bequeathing, exchanging, giving or alienating that property, unless the wife consent thereto. And on the other hand, if the wife shall prosecute the husband for adultery or poisoning, mortal injury or ill-treatment, and lose her case, in the first place, she shall forfeit her dowry, then she is to be deprived of all emoluments which would legally have accrued to her from her husband, unless the husband is of his own accord willing to make some provision for her; finally, the marriage between them is to be maintained intact, as it was before. If it is not the husband or wife who accuses the other, but some other third party from outside accuses one of them, and his case breaks down, the ecclesiastical judge is, at his own discretion, to inflict some heavy and exemplary punishment on him, and he is furthermore to give satisfaction to the party to whom he did the wrong. Lastly, such slanderers may neither return to the Church nor may they be admitted to the Sacraments, unless they have, as far as in them lies, restored the reputation of that person, whom they have discredited by calumny and falsehood, and shall have done penance in proportion to the crime. And we decree that these penalties, under this heading, shall be common to all, whether laymen or clergymen

Cap. XVI.—*Mariti poena suadentis uxori adulterium.*

Si maritus uxori suasor aut author ulla ratione fuerit adulterii committendi, damnabitur illa quidem *adulterii, sed et maritus lenocinii reus pronunciabitur, et matrimonii coniunctione neuter liberabitur. Quod et de uxore similiter intelligi volumus.*

XVI.—*The penalty of the husband who incites his wife to adultery.*

If the husband shall have been in any way the *inciter or instigator of his wife's committing* adultery, *she, indeed, shall be convicted of* adultery, but the *husband shall be declared guilty of procuring*, and neither shall be released from the bonds of matrimony. And this, we decree, is to be understood of the wife likewise.

Cap. XVII.—*Quae poena sit cum par adulterium est in utroque coniuge.*

Si persona quae fuerit adulteriii convicta crimen in altero coniuge possit idem ostendere et ostenderit priusquam coniunx ad novas nuptias diverterit, utriusque coniugis culpa par in pares incidet poenas, et prius inter illos firmum manebit matrimonium.

XVII.—*What the penalty is to be when both parties are equally guilty of adultery.*

If the person who has been convicted of adultery should be able to prove the same crime against the other marriage partner, and prove it before that party has proceeded to a fresh marriage, the equal guilt of each party shall involve equal punishment, and the former marriage between them shall remain valid.

Cap. XVIII.—*Receptatorum et fautorum adulterii, quae poena sit.*

Ne illi quidem iudicum Ecclesiasticorum diligentiam subterfugere debent qui receptatores sunt adulteriorum, aut illorum flagitia, ope, opera, vel consilio quacunque ratione procurant; quo in genere sunt exempli causa qui domum adulteris scientes expediunt, vel locum qualemcunque, qui sermonum, literarum aut munerum cuiuscunque generis sint internuncii. Quapropter omnem huiusmodi faecem, quae caenum adulterii quacunque parte commovet, Ecclesiasticis poenis et arbitriis etiam iudicis constringendum esse decernimus.

XVIII.—*What the penalty is to be for the harbourers and abettors of adultery.*

Of a surety those ought not to escape the vigilance of the ecclesiastical judges, who are the harbourers of adultery, or who in any way promote the disgrace of it by their help, action, or advice; in which class are, for example, those who wittingly lend their houses to adulterers, or a place of whatsoever description, and who are intermediaries of messages, letters or presents of any sort. Wherefore we decree that all reprobates of this kind, who encourage the uncleanness of adultery in whatever respect, must be restrained by ecclesiastical penalties and also by the pronouncements of the judge.

Cap. XIX.—*Separatio a Mensâ et Thoro tollitur.*

Mensae societas et thori solebat in certis criminibus adimi coniugibus, salvo tamen inter illas reliquo matrimonii iure; quae constitutio cum a sacris litteris aliena sit, et maximam perversitatem habeat, et malorum sentinam in matrimonium comportaverit, illud authoritate nostra totum aboleri placet.

XIX.—*The separation* a Mensâ et Thoro *to be abolished.*

It was formerly customary in the case of certain crimes to deprive married people of the right of association at *bed and board*, though in all other respects their marriage tie remained intact; and since this practice is contrary to the Holy Scriptures, involves the greatest confusion, and has introduced an accumulation of evils into matrimony, it is our will that the whole thing be, by our authority, abolished.

Cap. XX.—*Incestus et Scortationes laicorum quomodo puniuntur.*

Incestus, nominatim autem is qui primum ad gradum ascendit, afficietur poena sempiterna carceris. Deinde scortationes et vagae licentiosaeque libidines omnis generis magna suppliciorum acerbitate compraehendantur, ut tandem aliquando radicitus ex regno nostro extirpentur. Ecclesiastici igitur iudices diligenter eviligent, ut quascunque personas et cuiuscunque sexus flagitiosis et impuris libidinum congressibus implicatas in excommunicationem eiiciant; nisi mature moniti resipuerint. Et licet si ipsi correxerint, tamen publice cogantur Ecclesiae Satisfacere. Praeterea decem libras in pauperum cistam Ecclesiae suae propriam imponant, vel si minores illorum facultates sunt, tantum imponant quantum de bonis illorum commode detrahi potest.

XX.—*How incest and fornication of the laity are to be punished.*

Incest, by which is particularly meant that which has reached the worst form of sin, is to be visited with the penalty of imprisonment for life. Then fornication and indiscriminate and licentious lusts of every kind are to be checked by great severity in the punishment, so that they may eventually be completely rooted out from our kingdom. Therefore the ecclesiastical judges must take vigilant care that they visit with excommunication whatever persons of whichever sex have been involved in sensual associations of an impure and dissolute character, unless after timely warning they repent. And even though they have themselves amended their ways, they are nevertheless to be compelled publicly to make atonement to the Church. Moreover, they must place ten pounds in the box set apart for the poor of their Church, or if their means are insufficient, they must place there as much of their goods as can conveniently be spared.

Cap. XXI.—*Filius non legitimus quomodo sit alendus.*

Filius ex adulterio susceptus, aut ex simplici scortatione, quemadmodum appellant, patris impensis alatur, si quidem is inveniri poterit. Qui si non poterit erui, mater suum ipsa foetum propriis impensis sustentet.

XXI.—*How an illegitimate child is to be maintained.*

A child born of adultery or of mere fornication, to use the common term, is to be maintained at the father's expense, if, indeed, he can be discovered. But if he cannot be found the mother is herself to support her offspring at her own expense.

APPENDIX III.

Tables handed in by Sir John Macdonell, C.B.

TABLE I.

Matrimonial Petitions Filed, 1859–1909.

	Annual Averages.																									
	1859 to 1863.	1864 to 1868.	1869 to 1873.	1874 to 1878.	1879 to 1883.	1884 to 1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
For dissolution of marriage :																											
Husbands' petitions -	129	133	169	254	277	305	314	326	306	305	309	309	353	393	414	401	383	360	491	596	488	448	429	442	419	472	451
Wives' ,, -	75	109	120	179	205	224	208	215	220	234	207	238	220	280	269	243	262	249	259	293	337	272	323	325	315	374	336
Total -	204	233	289	433	482	529	522	541	526	539	516	547	573	673	683	644	645	609	750	889	825	720	752	767	734	846	787
Percentage of husbands' petitions.	63	57	58	59	58	58	60	60	58	57	60	56	62	58	61	62	59	59	65	67	59	62	57	58	57	56	57
Percentage of wives' petitions.	37	43	42	41	42	42	40	40	42	43	40	44	38	42	39	38	41	41	35	33	41	38	43	42	43	44	43
For judicial separation :																											
Husbands' petitions -	3	7	7	10	7	6	10	6	1	2	6	7	4	3	2	4	4	3	3	2	4	5	5	2	3	1	4
Wives' ,, -	50	60	72	105	115	125	115	111	84	106	104	96	106	96	96	102	78	86	95	96	86	97	87	74	82	66	89
Total -	53	67	79	115	122	131	125	117	85	108	110	103	110	99	98	106	82	89	98	98	90	102	92	76	85	67	93
Percentage of husbands' petitions.	5	10	10	9	6	4	8	5	1	2	5	7	4	3	2	4	5	3	3	2	4	5	5	3	4	1	4
Percentage of wives' petitions.	95	90	90	91	94	96	92	95	99	98	95	93	96	97	98	96	95	97	97	98	96	95	95	97	96	99	96
For nullity of marriage -	4	8	8	12	13	14	21	10	23	14	11	29	32	27	20	24	22	26	20	30	16	30	30	29	36	32	31
For restitution of conjugal rights.	11	15	15	19	19	22	25	14	13	16	22	23	19	20	20	22	21	23	30	33	31	35	43	54	49	65	72
Other petitions* - -	2	1	2	1	1	1	3	1	1	2	—	—	—	1	1	2	—	—	1	—	1	—	4	2	3	1	1
Total petitions filed	274	324	393	580	637	697	696	683	648	679	659	702	764	820	822	798	770	747	899	1,050	963	887	921	928	907	1,011	984

* Exclusive of petitions for damages only.

TABLE II.

DECREES GRANTED FOR DISSOLUTION OF MARRIAGE, 1858–1909.

Number granted on Husbands' and Wives' Petitions.

Year.	Decrees granted			Year.	Decrees granted		
	On Husbands' Petitions.	On Wives' Petitions.	Total.		On Husbands' Petitions.	On Wives' Petitions.	Total.
1858	109	70	179	1885	180	136	316
1859	89	52	141	1886	217	170	387
1860	68	59	127	1887	220	170	390
1861	79	39	118	1888	226	166	392
1862	105	48	153	1889	226	144	370
1863	95	65	160	1890	231	169	400
1864	100	66	166	1891	195	147	342
1865	88	59	147	1892	194	160	354
1866	88	58	146	1893	207	155	362
1867	87	57	144	1894	208	173	381
1868	93	88	181				
1869	101	85	186	1895	478		478
1870	113	81	194				
1871	111	79	190	1896	299	187	486
1872	109	94	203	1897	328	255	583
1873	140	98	238	1898	260	176	436
1874	170	111	281	1899	304	221	525
1875	184	120	304	1900	295	199	494
1876	159	124	283	1901	373	228	601
1877	191	131	322	1902	389	219	608
1878	225	155	380	1903	394	220	614
1879	148	152	300	1904	350	284	634
1880	197	143	340	1905	362	261	623
1881	179	123	302	1906	364	286	650
1882	180	165	345	1907	332	266	598
1883	231	130	361	1908	365	307	672
1884	198	139	337	1909	380	305	685

TABLE III.

DECREES GRANTED FOR DISSOLUTION OF MARRIAGE, 1858–1909.

Percentage of Petitions successful.

Year.	Percentage.		Year.	Percentage.		Year.	Percentage.	
	Husbands' Petitions.	Wives' Petitions.		Husbands' Petitions.	Wives' Petitions.		Husbands' Petitions.	Wives' Petitions.
1858	69·87	72·16	1876	69·13	72·09	1894	67·31	72·69
1859	68·99	73·24	1877	74·32	70·43			
1860	61·82	74·68	1878	75·76	70·45	1895	83·42	
1861	68·10	65·00	1879	64·07	72·38			
1862	75·54	73·85	1880	71·64	67·77	1896	76·08	66·79
1863	63·76	65·00	1881	65·57	66·13	1897	79·23	94·80
1864	67·57	71·74	1882	71·43	78·57	1898	64·84	72·43
1865	67·69	56·19	1883	65·44	63·11	1899	79·37	84·35
1866	66·17	61·05	1884	66·22	68·81	1900	81·94	79·92
1867	68·50	59·38	1885	70·87	69·39	1901	75·97	88·03
1868	73·81	78·57	1886	64·39	69·67	1902	65·27	74·74
1869	68·71	73·28	1887	67·48	66·93	1903	80·90	65·28
1870	71·52	77·14	1888	73·14	73·78	1904*	78·13	104·41
1871	64·91	64·75	1889	71·98	69·23	1905	84·38	80·80
1872	63·74	74·02	1890	70·86	78·60	1906	82·35	88·00
1873	70·00	76·56	1891	63·73	66·82	1907	79·24	84·44
1874	72·65	78·72	1892	63·61	68·38	1908	77·33	82·09
1875	73·31	68·97	1893	66·99	74·88	1909	84·26	90·77

* The number of decrees nisi granted in 1904 exceeded the number of petitions presented during the same year.

TABLE IV.

DECREES GRANTED FOR DISSOLUTION OF MARRIAGE, 1858–1909.

Population per 100,000 of estimated Population.

Year.	Proportion of Decrees per 100,000 of Population.	Year.	Proportion of Decrees per 100,000 of Population.	Year.	Proportion of Decrees per 100,000 of Population.
1858	·92	1876	1·16	1894	1·27
1859	·72	1877	1·30	1895	1·57
1860	·64	1878	1·52	1896	1·58
1861	·59	1879	1·18	1897	1·87
1862	·75	1880	1·32	1898	1·38
1863	·78	1881	1·16	1899	1·65
1864	·79	1882	1·31	1900	1·53
1865	·70	1883	1·36	1901	1·84
1866	·72	1884	1·25	1902	1·85
1867	·70	1885	1·16	1903	1·84
1868	·82	1886	1·41	1904	1·88
1869	·84	1887	1·40	1905	1·83
1870	·86	1888	1·39	1906	1·89
1871	·83	1889	1·30	1907	1·72
1872	·88	1890	1·39	1908	1·92
1873	1·02	1891	1·18	1909	1·93
1874	1·18	1892	1·20		
1875	1·26	1893	1·22		

TABLE V.

STATEMENT SHOWING THE PROPORTION OF DIVORCES TO MARRIED POPULATION AT EACH CENSUS YEAR FROM 1861 TO 1901.

(1.) Census Year.	(2.) Enumerated Married Population.	(3.) Decrees for Divorce.	(4.) Married Population to each Decree.	(5.) Decrees per 10,000 of Married Population.
1861	6,917,395	140	49,410	2·02
1871	7,831,890	202	38,772	2·58
1881	8,814,860	330	26,712	3·74
1891	9,768,197	366	26,689	3·75
1901	11,328,918	568	19,945	5·01

NOTE.—Column 2 represents the total husbands and wives enumerated. Column 3 the annual average for the five years in which the Census year is the middle year.

TABLE VI.

DECREES GRANTED FOR JUDICIAL SEPARATION, 1858–1909.

Number granted on Husbands' and Wives' Petitions.

Year.	Decrees granted			Year.	Decrees granted		
	On Husbands' Petitions.	On Wives' Petitions.	Total.		On Husbands' Petitions.	On Wives' Petitions.	Total.
1858	2	39	41	1885	2	40	42
1859	3	30	33	1886	1	53	54
1860	1	10	11	1887	2	48	50
1861	—	14	14	1888	—	39	39
1862	—	16	16	1889	4	40	44
1863	—	11	11	1890	1	38	39
1864	4	21	25	1891	—	18	18
1865	2	26	28	1892	—	33	33
1866	1	19	20	1893	4	21	25
1867	2	24	26	1894	1	23	24
1868	1	22	23				
1869	3	20	23	1895		27	27
1870	4	21	25				
1871	3	32	35	1896	2	42	44
1872	6	17	23	1897	2	25	27
1873	4	27	31	1898	—	24	24
1874	5	33	38	1899	—	34	34
1875	2	33	35	1900	—	19	19
1876	3	38	41	1901	—	27	27
1877	3	49	52	1902	—	29	29
1878	5	38	43	1903	—	18	18
1879	2	34	36	1904	1	21	22
1880	5	52	57	1905	—	25	25
1881	6	29	35	1906	1	19	20
1882	3	37	40	1907	2	29	31
1883	3	46	49	1908	1	27	28
1884	—	31	31	1909	1	24	25

TABLE VII.

DECREES GRANTED FOR JUDICIAL SEPARATION, 1858–1909.

Percentage of Petitions successful.

Year.	Percentage.		Year.	Percentage.		Year.	Percentage.	
	Husbands' Petitions.	Wives' Petitions.		Husbands' Petitions.	Wives' Petitions.		Husbands' Petitions.	Wives' Petitions.
1858	33·33	48·15	1876	23·08	30·40	1894	14·29	23·96
1859	50·00	44·78	1877	33·33	41·18			
1860	100·00	19·61	1878	35·71	38·38	1895	24·55	
1861	—	32·56	1879	28·57	34·34			
1862	—	32·65	1880	50·00	37·96	1896	66·67	43·75
1863	—	27·50	1881	85·71	26·36	1897	100·00	26·04
1864	44·44	32·81	1882	42·86	34·91	1898	—	23·53
1865	40·00	53·06	1883	50·00	38·02	1899	—	43·59
1866	33·33	32·76	1884	—	27·68	1900	—	22·09
1867	25·00	35·82	1885	40·00	33·90	1901	—	28·42
1868	12·50	35·48	1886	14·29	42·06	1902	—	30·21
1869	37·50	27·03	1887	50·00	33·80	1903	—	20·93
1870	44·44	29·17	1888	—	30·23	1904	20·00	21·65
1871	60·00	45·07	1889	40·00	34·78	1905	—	28·74
1872	100·00	24·29	1890	16·67	34·23	1906	50·00	25·68
1873	57·14	38·03	1891	—	21·43	1907	66·67	35·37
1874	62·50	40·24	1892	—	31·13	1908	100·00	40·91
1875	28·57	33·33	1893	66·67	20·19	1909	25·00	26·97

TABLE VIII.

DECREES GRANTED FOR JUDICIAL SEPARATION, 1858–1909.

Proportion per 100,000 of estimated Population.

Year.	Proportion of Decrees per 100,000 of Population.	Year.	Proportion of Decrees per 100,000 of Population.	Year.	Proportion of Decrees per 100,000 of Population.
1858	·21	1876	·17	1894	·08
1859	·17	1877	·21	1895	·09
1860	·06	1878	·17	1896	·14
1861	·07	1879	·14	1897	·09
1862	·08	1880	·22	1898	·08
1863	·05	1881	·13	1899	·11
1864	·12	1882	·15	1900	·06
1865	·13	1883	·18	1901	·08
1866	·09	1884	·12	1902	·09
1867	·12	1885	·15	1903	·05
1868	·10	1886	·20	1904	·07
1869	·10	1887	·18	1905	·07
1870	·11	1888	·14	1906	·06
1871	·15	1889	·15	1907	·09
1872	·10	1890	·14	1908	·08
1873	·13	1891	·06	1909	·07
1874	·16	1892	·11		
1875	·15	1893	·08		

TABLE IX.

STATEMENT SHOWING THE PROPORTION OF JUDICIAL SEPARATIONS TO MARRIED POPULATION AT EACH CENSUS YEAR FROM 1861 TO 1901.

Census Year.	Enumerated Married Population.	Number of Judicial Separations	Married Population to each Separation.	Number of Separations to 100,000 of Married Population.
1861	6,917,395	17	406,906	·25
1871	7,831,890	27	290,070	·34
1881	8,814,860	43	204,997	·49
1891	9,768,197	32	305,256	·33
1901	11,328,918	25	453,157	·22

NOTE.—Column 2 represents the total husbands and wives enumerated. Column 3 the annual average for the five years in which the Census year is the middle year.

TABLE X.

INDEX NUMBERS SHOWING THE NUMBER OF DECREES NISI GRANTED FOR DISSOLUTION OF MARRIAGE AND JUDICIAL SEPARATION.

The Number for 1858 *being taken as* 100.

Year.	Dissolution of Marriage.	Judicial Separation.	Year.	Dissolution of Marriage.	Judicial Separation.
1858 - - -	100	100	1907 - - -	334	76
1904 - - -	354	54	1908 - - -	375	68
1905 - - -	348	61	1909 - - -	383	61
1906 - - -	363	49			

TABLE XI.

SEPARATION ORDERS GRANTED BY MAGISTRATES.

	1907.	1908.	1909.
Orders granted to wives under Summary Jurisdiction (Married Women) Act, 1895, section 5, and Licensing Act, 1902, section 5 (2) - - - - - - - -	6,734	6,697	5,009
Orders granted to husbands under Licensing Act, 1902, section 5 (2) - - - - - - - -	273	289	218
	7,007	6,986	5,227

TABLE XII.

JUDICIAL SEPARATION—DECREES NISI GRANTED BY HIGH COURT AND SEPARATION ORDERS GRANTED BY COURTS OF SUMMARY JURISDICTION.

	Total Decrees for Separation.		Total Orders granted by Courts of Summary Jurisdiction.	
	Number.	Proportion per 100,000 of Population.	Number.	Proportion per 100,000 of Population.
1907	31	0·89	7,007	20·05
1908	28	0·79	6,986	19·76
1909	25	0·70	5,227	14·62

TABLE XIIa.

STATEMENT SHOWING THE NUMBER OF SEPARATION ORDERS GRANTED IN EACH COUNTY BY COURTS OF SUMMARY JURISDICTION AND PROPORTIONS PER 100,000 OF ESTIMATED POPULATION IN EACH OF THE YEARS 1907, 1908, AND 1909.

County.	1907.	1908.	1909.	Proportion per 100,000 Population.		
				1907.	1908.	1909.
ENGLAND.						
Bedford	25	12	15	13·95	6·65	8·25
Berks	15	23	22	5·67	5·63	8·19
Bucks	14	20	7	6·84	6·79	3·37
Cambridge	6	10	7	3·23	5·38	3·76
Chester	203	164	128	22·68	18·12	13·99
Cornwall	15	13	13	4·66	4·04	4·03
Cumberland	16	23	23	5·95	8·54	8·53
Derby	106	114	89	16·14	17·12	13·18
Devon	44	63	32	6·43	9·15	4·62
Dorset	9	7	12	4·31	3·34	5·69
Durham	493	471	404	37·86	35·65	32·57
Essex	48	58	58	3·75	4·42	4·32
Gloucester	151	160	126	20·22	21·24	16·59
Hereford	7	10	4	6·15	8·79	3·52
Hertford	15	19	19	5·36	6·70	6·61
Hunts	—	5	2	—	9·27	3·71
Kent	92	79	66	8·77	7·43	6·12
Lancaster	1,877	1,822	1,393	39·87	38·27	24·37
Leicester	60	49	33	12·53	10·09	6·70
Lincoln	61	67	62	11·74	12·82	11·78
London	832	802	610	17·49	16·72	12·62
Middlesex	93	85	60	9·75	8·67	5·69
Monmouth	36	33	21	11·08	10·02	6·29
Norfolk	45	51	48	9·29	10·49	9·85
Northampton	39	30	23	10·82	8·23	6·24
Northumberland	159	149	98	23·81	21·96	14·24
Nottingham	230	191	137	41·00	33·59	23·77
Oxford	18	11	7	9·69	5·93	3·77
Rutland	—	2	2	—	10·44	10·05
Salop	19	20	12	7·82	8·20	4·91
Somerset	19	29	19	4·31	6·56	4·29
Southampton	73	55	54	8·37	6·22	6·02
Stafford	370	353	309	27·63	26·03	22·50
Suffolk	14	21	18	3·66	5·46	4·66
Surrey	55	76	65	7·43	10·06	8·45
Sussex	59	58	39	9·21	8·97	5·97
Warwick	266	268	122	26·34	26·24	11·81
Westmorland	3	5	4	4·71	7·86	6·30
Wilts	17	15	6	6·10	5·36	2·13
Worcester	83	78	51	16·63	15·40	9·92
York, East Riding	81	96	50	23·15	12·21	11·77
York, North Riding	73	90	94	23·03	23·91	19·48
York, West Riding	885	913	588	29·85	29·50	19·31
Total, England	6,726	6,620	4,952	20·33	19·78	14·63
WALES.						
Anglesey	10	3	8	17·47	5·84	15·54
Brecon	7	12	6	12·43	21·17	10·52
Cardigan	—	7	2	—	11·71	3·35
Carmarthen	15	8	14	10·78	5·72	9·96
Carnarvon	13	19	6	9·89	14·34	4·49
Denbigh	9	19	10	6·41	13·40	6·98
Flint	10	12	8	11·79	14·06	9·31
Glamorgan	202	268	202	20·74	27·00	19·97
Merioneth	1	3	5	2·05	6·14	10·24
Montgomery	4	3	3	7·51	5·66	5·68
Pembroke	9	9	11	10·27	10·27	12·56
Radnor	1	3	—	4·10	12·22	—
Total, Wales	281	366	275	15·18	19·53	14·50
Total, England and Wales	7,007	6,986	5,227	20·05	19·76	14·62

TABLE XIII.

Duration of Marriage of Parties in Matrimonial Suits commenced in each Year, from 1897 to 1909.

Duration of Marriage.	1899.		1900.		1901.		1902.		1903.		Annual Average, 1899–1903.		1904.		1905.		1906.		1907.		1908.		Annual Average, 1904–08.		1909.	
	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.
Less than one year	1	—	—	—	—	2	1	1	3	3	1	1	6	6	1	5	2	1	2	1	2	1	3	3	1	—
One year and less than 2	16	18	9	9	10	17	5	10	11	12	10	13	7	8	10	9	8	13	6	7	11	10	8	10	13	11
2 years „ „ „ 5	41	47	50	54	67	43	77	41	57	49	58	47	44	57	59	67	72	62	51	49	64	58	58	59	66	50
5 „ „ „ „ 10	124	103	125	98	163	99	207	141	160	121	156	113	151	116	168	137	152	135	133	153	169	145	155	137	137	155
10 „ „ „ „ 20	184	143	159	155	225	173	257	179	210	194	207	169	207	170	169	193	183	175	189	181	191	227	188	189	204	227
20 „ „ upwards	34	59	38	50	41	58	61	70	62	80	47	63	54	61	46	53	50	72	53	79	51	81	50	69	54	65
Unknown	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—	—	—	—	—
Total	400	370	381	366	506	392	608	442	503	459	479	406	469	418	453	464	467	459	434	470	488	522	462	467	475	508
	770		747		898		1,050		962		885		887		917		926		904		1,010		929		983	

NOTE.—"H" signifies husband's petition. "W" signifies wife's petition.

TABLE XIV.

Age and Condition of Parties before Marriage.

Condition of Parties.	1899.		1900.		1901.		1902.		1903.		Annual Average, 1899–1903.		1904.		1905.		1906.		1907.		1908.		Annual Average, 1904–08.		1909.	
	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.
Bachelor	58	666	37	645	48	787	77	920	69	882	58	780	47	833	48	835	45	828	58	789	52	899	50	837	51	882
Spinster	214	530	204	491	243	616	350	662	287	661	260	592	239	638	246	642	240	646	270	595	232	725	246	649	252	683
Widower	1	44	—	54	1	55	1	51	—	10	1	43	—	5	—	29	—	47	—	40	—	42	—	33	—	43
Widow	—	23	—	38	2	23	—	34	—	12	—	26	—	8	1	24	—	31	—	22	1	36	—	24	2	32
Divorced Husband	—	—	—	2	—	4	—	2	—	1	—	2	—	—	—	1	—	2	—	8	—	9	—	4	—	6
„ Wife	—	2	1	6	1	7	—	1	—	2	—	3	—	—	—	—	—	5	—	8	—	8	—	1	—	13
Unknown	—	2	—	16	1	8	1	1	—	—	—	5	—	4	—	8	—	8	—	18	—	16		11	—	2
	273	1,267	242	1,252	296	1,500	429	1,671	356	1,568	319	1,451	286	1,488	295	1,539	285	1,567	328	1,480	285	1,735	296	1,562	305	1,661
Total	1,540		1,494		1,796		2,100		1,924		1,770		1,774		1,834		1,852		1,808		2,020		1,858		1,966	

TABLE XV.

Number of Children of Marriage.

Number of Children.	1899.		1900.		1901.		1902.		1903.		Annual Average, 1899–1903.		1904.		1905.		1906.		1907.		1908.		Annual Average, 1904–08.		1909.	
	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.
No children	175	147	167	156	188	166	230	185	183	170	188	165	178	147	180	167	201	161	169	182	198	235	185	178	213	197
One child	97	83	80	84	129	91	140	115	105	133	110	101	110	116	114	137	120	127	91	128	119	136	111	129	104	137
Two children	58	57	59	53	93	57	98	62	76	75	77	61	78	82	73	86	73	80	84	83	86	67	79	80	75	89
Three to six children	66	69	68	63	86	67	131	65	128	70	96	67	97	66	83	69	62	78	84	70	82	71	82	71	80	79
Above six children	4	14	6	9	10	11	9	15	11	11	8	12	6	7	3	5	9	12	6	7	3	11	5	8	3	6
Number unknown	—	—	1	1	—	—	—	—	—	—	—	—	—	—	—	—	2	1	—	—	—	2	—	1	—	—
Total	400	370	381	366	506	392	608	442	503	459	479	406	469	418	453	464	467	459	434	470	488	522	462	467	475	508
	770		747		898		1,050		962		885		887		917		926		904		1,010		929		983	

NOTE.—"H." signifies husband's petition. "W." signifies wife's petition.

TABLE XVA.

Statement of the Number of Petitions presented by Persons apparently belonging to the Working Classes (compiled from the Occupations of Husbands at Date of Marriage).

Classification of Occupation at Date of Marriage.	Number.		Classification of Occupation at Date of Marriage.	Number.		Classification of Occupation at Date of Marriage.	Number.	
	1907.	1908.		1907.	1908.		1907.	1908.
Agriculture	3	5	Navigation and Fishing:—			Trade—*continued.*		
Mining and Quarrying	12	18	Seamen	9	2	Dealers in Articles of Food	6	1
Manufactures, &c.:—			Fishermen	3	2	Dealers in Articles of Clothes	—	1
Building, &c.	21	5	Others	6	6	Other Dealers	1	2
Metal Work	14	17	Inland Transport:—			Domestic Service	10	12
Furniture and Wood	5	22	Railways	13	16	Prison Warder	—	1
Textile Fabric	10	12	Road	14	17	Soldier and Sailor	29	20
Clothing	13	17	Postal Employés	1	3	Policeman	7	4
Brewing	2	—	Others			Out of Employment and Miscellaneous.	3	3
Food	—	1	Trade:—	3	2			
Printing	4	3	Shop Assistants, &c.	3	5	Prisoner	—	2
Labourers	17	24	Porters, Messengers	7	5			
Miscellaneous	41	32	Waiter, Barman, &c.	4	6	Total	261	266

NOTE.—The proportion of Petitions presented by members of the working classes to the total Petitions are as follows:—1907—28·87; 1908—26·33.

TABLE XVI.

Divorces, 1887 to 1908, in certain Countries.

Country.	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.
Austria - -	111	86	108	106	116	129	130	133	136	139	150	169	156	163	187	222	206	285	262	290	—*	—*
Belgium - -	292	356	379	373	402	441	497	477	492	548	625	747	563	690	821	703	734	932	901	618	—*	—*
Bulgaria - -	204	234	263	238	279	259	283	365	355	404	430	472	380	292	—*	—*	—*	—*	—*	—*	—*	—*
Denmark - -	—*	—*	—*	—*	—*	—*	—*	—*	—*	316	344	349	368	381	375	481	449	473	549	589	—	—
England and Wales	390	392	370	400	342	354	362	381	478	486	583	436	525	494	601	608	614	634	623	650	598	672
France - -	5,797	5,482	6,249	6,557	6,431	7,035	6,937	7,893	7,700	7,879	7,999	8,100	8,042	7,820	8,841	9,431	10,186	10,850	10,860	—	—	—
Germany - -	6,357	6,618	6,457	6,220	6,677	6,513	6,694	7,502	8,326	8,460	8,878	9,008	9,433	7,928	7,964	9,069	9,933	10,868	11,147	12,180	—	—
Hungary - -	1,000	1,165	1,128	1,137	1,107	1,305	1,339	1,433	1,334	420	694	1,412	1,940	2,100	2,541	2,659	2,905	3,626	3,638	—	—	—
Ireland (Private Acts).	—	1	—	—	—	1	1	2	2	3	2	2	—	—	—	—	—	2	1	1 5	5	—
Netherlands, The -	333	409	360	383	414	354	405	391	473	463	453	509	484	551	561	570	610	642	717	821	—	—
Norway - -	28	33	42	40	58	76	102	109	114	97	94	140	123	106	138	139	185	183	235	208	—	—
Roumania - -	722	758	879	816	803	665	869	880	938	986	1,079	1,083	1,194	1,252	1,329	1,301	1,670	1,800	—	—	—	—
Scotland - -	—	—	—	—	—	—	—	—	—	—	—	145	165	142	161	216	192	187	170	169	197	191
Servia - - -	297	357	284	194	173	306	285	269	316	290	273	268	329	305	263	393	387	426	—	—	—	—
Sweden - -	233	252	240	296	276	316	293	292	305	349	349	409	387	405	359	391	418	442	448	534	—	—
Switzerland - -	925	841	865	880	877	881	903	932	897	1,057	1,011	1,018	1,091	1,025	1,027	1,105	1,182	1,243	1,206	1,343	1,494	—
United States -	27,919	28,669	31,735	33,461	35,540	36,579	37,468	37,568	40,387	42,937	44,699	47,849	51,437	55,751	60,984	61,480	64,925	66,199	67,976	72,062	—	—

* Figures not available.

Note to Table XVI.—There are discrepancies in the returns as to some countries. The figures for Germany include separations; those for France are the decrees granted by the Courts, not those inscribed upon the marriage record. Some of the figures appear to include annulments.

TABLE XVII.

Statement showing Quinquennial Averages for Divorces in certain Countries for the Years 1887–1891 and 1902–1906.

Country.	Annual Average, 1887 to 1891.	Annual Average, 1902 to 1906.	Increase per Cent.	Country.	Annual Average, 1887 to 1891.	Annual Average, 1902 to 1906.	Increase per Cent.
Austria - - - -	105·4	253·0	140·0	The Netherlands - - -	379·8	672·0	76·9
Belgium - - - -	360·4	777·6	115·8	Norway - - - -	40·2	190·0	372·6
Bulgaria - - - -	243·6	395·6*	62·4	Servia - - - -	261·0	402·0	54·0
Denmark - - - -	360·5†	488·0	35·4	Roumania - - - -	795·6	1,590·3	99·9
England and Wales - - -	378·8	625·8	65·2	Scotland - - - -	166‡	183‡	10·4
France - - - -	6,103·2	10,331·8	69·3	Sweden - - - -	259·4	446·6	72·2
Germany - - - -	6,465·8	10,639·4	64·5	Switzerland - - - -	877·6	1,215·8	38·5
Hungary - - - -	1,107·4	3,207·0	189·6	United States - - - -	31,464·8	66,528·4	111·4

* Average for 1896 to 1900. † Average for 1897 to 1900. ‡ Averages for 1898 to 1902 and 1904 to 1908.

TABLE XVIII.

DIVORCES PER 100,000 OF POPULATION.

Country.	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.
Austria	—*	—*	—*	—*	—*	1	1	1	1	1	1	1	1	1	1	1	1	—*	—*	—*	—*	—*
Belgium	5	6	6	6	7	7	8	8	8	8	9	11	8	10	12	10	11	13	13	—*	—*	—*
Denmark	—*	—*	—*	—*	—*	—*	—*	—*	—*	14	15	15	15	16	15	19	18	19	21	23	—*	—*
England	1	1	1	1	1	1	1	1	2	2	2	1	2	2	2	2	2	2	2	2	2	2
France	15	14	16	17	17	18	18	21	20	20	21	21	21	20	23	24	26	28	28	—*	—*	—*
Germany	13	14	13	13	13	13	13	15	16	16	17	17	17	14	14	16	17	18	19	—*	—*	—*
Hungary	6	7	7	7	6	7	8	8	7	2	4	8	10	11	13	14	15	18	18	—*	—*	—*
Netherlands	8	9	8	8	9	8	9	8	10	9	9	10	9	11	11	11	11	12	13	—*	—*	—*
Norway	1	2	2	2	3	4	5	5	6	5	4	7	6	5	6	6	8	8	—*	—*	—*	—*
Roumania	14	15	17	—	—	12	16	16	17	17	19	18	20	21	22	21	27	28	—*	—*	—*	—*
Scotland	—*	—*	—*	—*	—*	—*	—*	—*	—*	—*	—*	3	4	3	4	5	4	4	4	4	4	4
Servia*	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Sweden	5	5	5	6	6	7	6	6	6	7	7	8	8	8	7	8	8	8	—*	—*	—*	—*
Switzerland	32	29	30	30	30	29	30	30	29	34	32	32	33	31	31	33	35	36	35	38	—*	—*
United States	47	48	52	53	55	56	56	55	58	61	62	65	69	73	79	78	81	81	82	86	—*	—*

NOTE.—Less than 1 per 100,000 not given.

* Figures not available.

TABLE XIX.

UNITED STATES.—DIVORCES—PERCENTAGE OF INCREASE.

	Increase over preceding 5-year Period.		Increase over preceding 5-year Period.
1902–1906	27·6 per cent.	1882–1886	31·4 per cent.
1897–1901	33·7 „	1887–1881	30·3 „
1892–1896	23·9 „	1872–1876	27·9 „
1887–1891	34·1 „	1867–1871	

TABLE XX

Divorces in various States and Territories of the United States.

Rank according to Annual Number of Divorces							Annual Average Number of Divorces					
Per 100,000 Married Population.		Per 100,000 Population.					Per 100,000 Married Population.		Per 100,000 Population.			
1890.	1900.	1870.	1880.	1890.	1900.		1890.	1900.	1870.	1880.	1890.	1900.
3	1	4	11	3	1	Washington	316	513	88	75	109	184
2	2	7	2	2	2	Montana	430	497	73	125	139	167
1	3	12	1	1	3	Colorado	561	409	60	138	197	158
9	4	28	18	9	5	Arkansas	269	399	24	53	90	136
10	5	31	20	14	7	Texas	253	391	21	49	82	131
4	6	6	7	4	6	Oregon	312	368	80	92	108	134
8	7	1	4	11	11	Wyoming	272	361	99	111	86	118
7	8	8	13	5	4	Indiana	277	355	69	70	104	142
6	9	9	17	8	9	Idaho	280	347	67	58	93	120
33	10	—	—	34	8	Okahama	122	346	—	—	46	129
19	11	38	23	21	9	Arizona	201	344	10	47	67	120
38	12	—	—	39	13	Indian Territory	98	326	—	—	33	113
5	13	1	5	9	15	Nevada	306	315	99	106	97	111
11	14	14	9	12	17	California	247	297	52	84	84	108
13	15	16	26	12	16	Kansas	226	286	51	44	84	109
15	16	11	10	10	12	Maine	212	282	61	78	88	117
18	17	23	29	19	20	Missouri	202	281	29	40	71	103
17	17	3	6	15	18	Rhode Island	203	281	89	93	76	105
14	19	10	3	17	24	Utah	225	274	62	114	74	92
12	20	13	8	6	14	New Hampshire	240	272	53	85	100	112
23	21	26	21	24	22	South Dacota	181	270	25	48	65	95
32	22	48	25	33	27	North Dacota	135	268	—	46	47	88
16	23	16	14	16	21	Illinois	307	267	51	68	75	100
21	24	28	30	26	26	Tennessee	189	261	24	38	62	89
24	25	19	12	18	19	Michigan	179	257	47	72	72	104
22	26	18	16	21	23	Iowa	183	246	49	60	67	93
25	27	25	31	27	28	Kentucky	172	237	28	35	58	84
26	28	21	21	25	25	Ohio	171	231	37	48	64	91
28	29	30	18	28	30	Florida	167	226	23	53	57	79
20	29	23	27	19	29	Nebraska	199	226	29	43	71	82
30	31	36	33	32	32	Mississippi	151	225	12	30	48	74
28	32	38	35	29	34	Alabama	167	208	10	27	54	69

35	33	46	42	34	33	- - New Mexico - -	120	193	1	12	46	73
33	34	33	37	36	36	- - West Virginia - -	122	183	18	25	41	64
31	35	20	28	30	35	- - Wisconsin - -	142	180	38	41	51	65
37	36	15	23	31	31	- - Vermont - -	116	177	50	47	49	75
38	37	22	32	38	37	- District of Columbia -	98	162	30	31	34	58
36	38	31	35	36	38	- - Minnesota - -	119	161	21	27	41	55
26	39	5	15	23	39	- - Connecticut - -	171	130	84	61	66	50
40	40	44	45	41	41	- - Louisiana - -	91	127	5	10	29	41
41	41	26	33	40	40	- - Massachusetts - -	85	124	25	30	32	47
43	42	43	44	45	43	- - Virginia - -	72	117	6	11	22	38
45	43	36	42	43	42	- - Maryland - -	69	114	12	12	24	40
42	44	33	38	42	44	- - Pennsylvania - -	75	94	18	21	27	35
43	45	38	40	43	45	- - Georgia - -	72	78	10	14	24	26
49	46	45	47	49	46	- - North Carolina - -	37	75	3	6	12	24
47	47	41	41	46	47	- - New Jersey - -	46	60	9	13	18	23
48	47	35	39	48	47	- - New York - -	45	60	16	16	17	23
46	49	42	45	46	49	- - Delaware - -	50	43	7	10	18	16
50	50	47	48	—	—	- - South Carolina - -	—	—	—	1	—	—

TABLE XXI.

AUSTRALASIA.—DECREES OF DIVORCE.

—	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
New South Wales	29	41	56	55	66	102	305	311	299	233	245	244	230	216	252	245	206	216	176	175	223	195	275
Victoria -	18	28	22	40	99	91	85	81	85	106	117	87	105	93	83	109	101	140	136	123	134	151	138
Queensland -	—	6	11	8	5	6	5	6	4	3	10	7	10	12	14	6	8	13	5	14	12	11	16
South Australia -	3	2	6	2	5	9	8	5	5	6	3	7	11	7	6	2	10	4	6	1	11	8	12
Western Australia	—	1	1	3	2	1	1	1	2	1	4	3	3	16	12	8	10	16	11	18	16	19	13
Tasmania -	—	4	3	2	3	3	6	5	3	3	4	2	4	4	11	3	3	2	2	5	—	7	12
New Zealand -	16	32	17	21	20	18	25	20	18	36	33	31	46	85	101	90	124	99	114	125	147	171	163

TABLE XXII.

AUSTRALASIA.—DIVORCES PER 100,000 OF POPULATION.

—	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.
New South Wales	3	4	5	5	6	9	25	25	24	18	19	18	17	16	18	17	14	15	11	11
Victoria	2	3	2	4	9	8	7	7	7	9	10	7	9	8	7	9	8	12	11	10
Queensland	—	2	3	2	1	1	1	1	1	1	2	1	2	2	3	1	2	2	1	2
South Australia	1	1	2	1	2	3	2	1	1	2	1	2	3	2	2	1	3	1	2	—
Western Australia	—	2	2	6	4	2	2	1	2	1	2	2	2	9	6	4	4	7	4	7
Tasmania	—	3	2	1	2	2	4	3	2	2	2	1	2	2	6	2	2	1	1	—
New Zealand	3	5	3	3	3	3	4	3	3	5	5	4	6	11	13	11	16	13	14	17

TABLE XXIII.

AUSTRALASIA.—JUDICIAL SEPARATIONS.

—	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
New South Wales	1	2	4	4	7	11	9	14	11	8	13	17	17	14	20	21	14	8	15	10	14	15	12
Victoria	5	1	3	—	--	1	7	2	—	2	—	—	2	—	—	—	—	1	1	2	—	1	1
Queensland	1	—	—	2	1	—	2	—	—	2	1	—	1	1	—	—	1	1	1	3	1	2	—
South Australia	—	—	—	—	—	—	1	1	—	1	—	1	—	1	—	—	—	—	—	1	—	—	1
Western Australia	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1	—	1	—	—	—	1
Tasmania	—	—	1	—	—	1	—	—	1	—	1	—	—	—	—	—	—	—	—	—	—	—	1
New Zealand	1	—	1	3	3	1	1	4	5	2	1	2	16	3	1	—	3	2	—	1	1	3	—

TABLE XXIV.

CANADA.—DECREES OF DIVORCE.

—	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
Ontario	2	2	3	2	4	1	3	5	3	—	1	2	2	2	2	2	2	5	2	10	3	8	8
Quebec	3	1	1	—	—	1	4	1	—	—	—	1	1	1	—	—	1	1	3	3	1	—	4
N.W. Territories	—	—	—	—	—	1	—	—	—	—	—	—	1	1	—	—	1	—	2	1	—	—	2
Manitoba	—	—	—	—	—	1	—	—	—	—	—	—	—	1	—	—	2	—	2	—	1	—	2
Nova Scotia	1	3	3	4	3	3	5	1	5	6	2	2	5	1	10	9	8	6	6	5	7	4	7
New Brunswick	3	1	6	3	—	5	2	—	5	1	—	5	3	1	—	1	4	2	2	1	3	5	6
British Columbia	1	2	2	3	3	3	1	2	—	3	3	6	2	4	7	3	4	5	18	17	9	12	22
Prince Edward's Island	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

APPENDIX IV.

BILLS OF COSTS IN WORKMEN'S COMPENSATION CASES SUPPLIED BY MR. GOUGH AS REQUESTED IN QUESTION 3376.

No. 1.

Applicant's Costs ordered to be taxed on Scale "A."

1909.		£ s. d.	£ s. d.
	Instructions to sue		0 3 4
	Letter before action		0 3 6
	Preparing particulars of claim		0 6 0
	Attending to enter		0 3 4
	Notice to produce and copy		0 3 0
	Examining and taking minutes of evidence—applicant and two witnesses		0 6 0
Sept. 10.	Attending court, conducting case when judgment given for 3*l.* and costs ordered to be taxed on scale "A"		0 15 0
	Drawing bill of costs and copy		0 1 0
	Attending for appointment to tax		0 2 0
	Attending taxation		0 3 4
£ s. d.	*Witnesses:*		
0 4 0	*Miss Gertrude May Randall*— Applicant, attendance and mileage	0 7 6	
	Dr. Jamison, Tottenham Hospital	1 1 0	
	Mileage	0 2 0	
0 4 6	*Mr. Blake*, High Cross Road, Tottenham, assistant	0 7 6	
0 8 6	Mileage	0 1 0	
		1 19 0	2 6 6
			1 19 0
			4 5 6
	Taxed off		0 8 6
			3 17 0
	Taxing fee		0 10 0
			4 7 0

No. 2.

Costs of Applicant under Award. Scale "B."

1909.		£ s. d.
Aug. 20.	Letter before action	0 6 6
Sept. 17.	Instructions to apply for an arbitrator	0 6 8
	Preparing form application and particulars	0 7 0
	Attending filing same	0 6 8
	Notice to produce	0 4 0
	The like to admit	0 4 0
	Service	0 1 6
	Perusing respondents' notice to produce	0 5 0
£ s. d.	The like to admit	0 5 0
0 6 8	Attending inspecting respondents' documents	0 6 8
0 6 8	Attending respondents—inspecting documents	0 6 8
0 1 8	Perusing answers	0 5 0
0 1 8	Perusing amended answers	0 5 0
	Minutes of evidence—one witness	0 3 4
	Copy documents, folios 3	0 1 0
Oct. 25.	Attending at the court—conducting case without counsel	1 1 0
Nov. 22.	Attending to hear deferred judgment	0 6 8
0 3 4	Drawing award	0 3 4
0 3 4	Attending lodging	0 3 4
	Drawing bill of costs, folios 4	0 2 8
	Copy	0 1 4
0 3 4	Attending obtaining appointment to tax	0 6 8
	Attending taxation	0 6 8
	Letters	0 5 0
1 6 8		6 7 8
	Taxing fee	0 10 0
		6 17 8
	Taxed off	1 6 8
		5 11 0

No. 3.

Applicant's Costs to be taxed under Scale "B."

1907.		£ s. d.	£ s. d.
Feb. 5.	Letter before action		0 3 6
	Instructions to sue		0 6 8
	Preparing particulars of claim and copies		0 12 0
	Fair copy particulars for use of judge		0 2 0
£ s. d.	Attending issuing arbitration		0 6 8
0 3 4	Attending respondents' Insurance Co. on the telephone on their requesting examination of applicant		0 3 4
	Attending applicant thereon and advising him to submit himself for examination again		0 6 8
0 3 6	Attending respondents' Insurance Co. and arranging an appointment for applicant to call on their doctor. Writing applicant instructing		
June 1.	him to attend appointment		0 3 6
0 3 4	Perusing respondents' answer herein		0 6 8
	Attending applicant thereon		0 6 8
0 6 8	Attending him and arranging for him to attend at Dr. Brown's surgery to be examined		0 6 8
1 1 0	Paid Dr. Brown's fee for examination and report	3 3 0	
June 3.	Attending issuing subpœna for attendance of Dr. Borland		0 3 0
0 6 8	Attending to serve him therewith when we were informed that he was away in Scotland and would not be returning until the middle of June		0 6 8
0 3 4	Attending respondents' solicitors on the telephone and requesting them to consent to an adjournment of the case, which they agreed to do		0 3 4
0 3 4	Attending them with consent on their signing same		0 3 4
0 6 8	Attending at the office of the court and filing consent		0 6 8
	Instructions to counsel to advise on evidence		0 3 4
	Paid his fee and clerk	1 3 6	
0 4 0	Drawing fair copy notice amending applicant's particulars herein		0 4 0
0 6 8	Attending filing same at the court		0 6 8
0 1 0	Fair copy for respondents' solicitors		0 1 0
0 2 6	Attending serving them therewith		0 2 6
0 5 0	Attending Mr. Odger, senr., arranging for his attendance at the court without a subpœna		0 5 0
0 5 0	The like attendance on Dr. Brown		0 5 0
	Service of subpœna on Dr. Borland		0 2 6
	Instructions for brief		1 11 6
0 5 0	Drawing same, folios 35		1 15 0
0 1 8	Fair copy same for Mr. P. T. Blackwell, folios 35		0 11 8
	Fair copy following documents to accompany brief		
	Particulars of claim		0 2 0
	Notice amending particulars		0 1 0
	Respondents' answer, folios 4		0 1 4
	Correspondence, folios 10		0 3 4
	Report of Dr. Brown, folios 3		0 1 0
0 3 4	Attending counsel with brief		0 6 8
	Paid his fee and clerk	3 5 6	
	Attending arranging conference with counsel and subsequently attending thereon		0 6 8
	Paid his fee and clerk	1 6 0	
July 2.	Respondents' solicitors having requested medical examination of applicant. Writing applicant to attend court at 9.45 for this purpose		0 3 6
0 2 6	Writing Dr. Borland to attend court at 9.45 so that he might attend examination		0 3 6
July 3.	Attending respondents' solicitors as to examination and attendance on applicant thereon and subsequently attending on examination of applicant by Dr. Ettles		0 6 8
	Attending respondents' solicitors again on their requesting examination by Dr. Gibbons and arranging with Dr. Borland for him to attend and attending applicant, instructing and advising him as to another examination		0 6 8
1 1 0	Paid Dr. Borland's fee for consultation and examination with Drs. Gibbons and Ettles	1 1 0	
	Attending court with counsel when, after hearing the evidence, the judge made an award in favour of the applicant for 6*s.* 3*d.* per week from 1st January to 1st July, costs on "B" scale, qualifying fee for Dr. Brown, and advice on evidence		0 15 0
	Paid witnesses :—		
	Applicant	0 5 0	
	Travelling expenses from Leyton	0 1 0	
	Mr. W. Odger, traveller	0 10 0	
	Travelling expenses from Leyton	0 1 0	
	Dr. Borland	1 1 0	
	Travelling expenses from Walthamstow	0 1 0	
	Dr. Brown	2 2 0	
	Travelling expenses from Goswell Road, E.C.	0 2 6	
	Drawing these costs and copy folios 14		0 9 4
	Fair copy for respondents' solicitors, folios 14		0 4 8
	Attending for and obtaining appointment to tax		0 3 4

1907. July 3. £ s. d.		£ s. d.	£ s. d.
	Notice thereof		0 1 6
0 1 0	Copy and service on respondents' solicitors		0 2 6
	Attending taxation of costs		0 6 8
	Paid taxing fee	0 10 0	
	Letters, &c.		0 5 0
5 16 6		14 12 6	14 5 10
	Disbursements	- -	14 12 6
			28 18 4
	Taxed off	- -	5 16 6
	Allowed at	- -	23 1 10

APPENDIX V.

Translation of Norwegian Divorce Law supplied by Lord Salvesen.

Law with regard to the Dissolution of Marriage.

We, Haakon, King of Norway, make known that there has been laid before Us a resolution of the Storting, duly assembled, dated 17th August 1909, in these terms:—

1. When both spouses are agreed to suspend the conjugal relations, a grant to this effect may be communicated to them, on their application, by the duly constituted authority. Before such grant is made the Commission of Conciliation, or, if both parties are agreed, the clergyman of the congregation to which they belong or the Ruling Elder (?) must have tried to effect a reconciliation between them on their personal attendance. If the spouses are residing at different places, the proceedings may take place for each of them separately. For spouses who do not reside in this Kingdom conciliation proceedings are not necessary.

2. The King may, on application of one of the spouses, make a grant authorising the suspension of the conjugal relations where the other spouse has continuously or repeatedly neglected his duty of maintenance, or has been guilty of gross or continuous violation of the duties arising from marriage, or has become addicted to the habitual misuse of alcohol or other means of intoxication, or lives a criminal life, or has repeatedly received a sentence which has involved loss of the rights of citizenship, or when there has arisen between the spouses such want of agreement or harmony as, that having regard both to the spouses as well as to the children, where such exist, it cannot reasonably be demanded that the conjugal relations shall continue.

3. A marriage may, on the application of one of the spouses, be dissolved when the other spouse, at the time when the marriage was contracted, without the knowledge of the other, has—

(*a*) Suffered from a physical defect which made him or her unsuited for marriage; or

(*b*) Suffered from epilepsy or leprosy, or a venereal disease in an infectious form; or

(*c*) Suffered from, or had suffered from insanity; or

(*d*) Had been made pregnant by some other than the husband.

The application must be made within six months after the spouse has obtained knowledge of the circumstance; and, in every case, not later than five years after the date of the marriage. Dissolution on the grounds mentioned under (*a*) and (*b*) cannot, however, be demanded after the defect has been removed, or the illness cured.

4. The marriage may, on the application of one of the spouses, be dissolved when the other spouse, during the marriage, has been guilty of—

(*a*) Such crimes as are dealt with in the General Criminal Code, section 155, subsection (1), 191 to 199, 202 to 209, 213 to 220; or

(*b*) Such crimes as are dealt with in the Criminal Code, sections 216, 217, and 223 to 225, if the crime has been committed with indecent intent; or

(*c*) A crime involving bodily injury (Criminal Law, section 229) of the other spouse, or of any other deliberate crime by which the other spouse suffers injury in body or in health; or

(*d*) Cruelty to the children, or in their presence such conduct as is dealt with in section 380 of the Criminal Code.

Provided that no spouse who has willingly assisted in or has approved of the criminal act can apply for the dissolution of the marriage on that ground.

The application must be made within six months after the spouse has obtained knowledge of the criminal act, and, at latest, within five years after it has taken place. If the criminal conduct leads to conviction, the application may be made even later than this, so long as it is within three months after the spouse has been informed of the sentence, and within one year after it has been pronounced.

5. A marriage may be dissolved on the application of one of the spouses, when the other spouse is sentenced to loss of liberty for three years or upwards, or has been repeatedly convicted under section 65 of the Criminal Law, or has been convicted repeatedly under sections 4, 5, 18, and 19 of the law with regard to vagrancy, mendicancy, and drunkenness, of 31st May 1900, in cases where the sentence authorises imprisonment with hard labour, or in a home for inebriates. Provided that the marriage cannot be dissolved at the instance of a spouse who, of his own free will, assisted in or has approved of the criminal conduct.

The application must be made within one year after the spouse has become aware of the sentence; and, at latest, within three years after the sentence has been pronounced.

6. A marriage may, on the application of one spouse, be dissolved when the other spouse, during two years, against the wishes of the first, has obstinately withdrawn from the conjugal life, and this has not later been renewed.

7. A marriage may, on the application of the spouses, be dissolved when the other spouse, according to the concurring declaration of two experts, suffer from insanity, which has lasted for at least three years, and which there is no reasonable prospect of curing.

As experts, medical men must be selected who are competent to serve as medical legal experts in questions relating to lunacy.

8. A marriage may, on the application of one of the spouses, be dissolved when they have lived separate for at least two years after a grant has been made either by the constituted authority or by the King, and the conjugal relations have not later been renewed.

Provided that the marriage may be dissolved after one year's such separation, if it is demanded by both spouses.

A marriage may, on the application of one of the spouses, be dissolved when the other, without such grant as above named, has lived separate for at least three years, and has not later renewed conjugal relations.

9. Dissolution of the marriage, in terms of sections 7 and 8, takes place by authority of the King. In other cases the application of a spouse for the dissolution of the marriage, under the provisions of this law, must be made in an action directed against the other spouse.

10. The rules laid down in the Criminal Procedure law of 1st July 1887, apply to applications for the dissolution of the marriage so far as relating to cases of crime; though an action for the dissolution of a marriage under the foregoing provisions may, if the defender is not domiciled in the Kingdom, be brought in the court of his last domicile here, or in the court of the pursuer's domicile.

11. In ordinary actions for the dissolution of marriage, the court will attempt to reconcile the parties. The court must, *ex propria motu*, see that the case has been fully proved, and can, with this object, put questions to the parties and require further evidence. The court is not bound by the parties' pleas or admissions. The court will be held with closed doors.

Both spouses are required to attend while the trial is being conducted; and at other times that the court may think necessary if they are living within the jurisdiction; if outside the jurisdiction, they must be cited to attend at the court of that place where they have their domicile or may be living for the time being.

If the defender does not attend, and there is reason to believe that he has not timeously obtained knowledge of the citation, or on lawful grounds has been prevented from personally attending, the court, if it does not on this ground postpone the trial, must appoint a duly qualified solicitor to act for the defender. The proceedings ought to be adjourned if it appears that the defect may be remedied or the hindrance removed in the course of a short time.

12. The judgment, by which a marriage is dissolved, takes effect only from the time when it becomes final.

When a marriage is dissolved by a judgment or grant, the wife must not enter into another marriage until 10 months have elapsed, in which she has lived completely separated from her husband. This matter, as to the time which must elapse before the wife can enter into a new marriage, ought to be expressed in the judgment or the grant.

13. On the dissolution of the marriage, as well as when it is terminated by grant, the *communio bonorum* ceases.

The common property ought, as a rule, to be divided equally between them.

Provided that in those cases which are dealt with under section 3, the spouse, on whose application the marriage has been dissolved, may demand that the common goods shall be divided in such a way, that each of the spouses receives what he or she has brought into communion at the date of the marriage, or has succeeded to during its continuance. If the property is not sufficient for this purpose, each of the spouses must bear a proportionate amount of loss. The regulations and laws, with regard to the division of the common property between spouses, of date, 29th June, 1888, must in every case be applied.

A precontract entered into, before a grant for the dissolution of the marriage has been made, with regard to the division of the property must, in order to become binding, be proved to the duly constituted authority.

14. In an action for the suspension of the marriage relations, the husband may be compelled to make a contribution to the wife's maintenance so long as the marriage lasts. A contract entered into before such action, with regard to such maintenance, is only binding so long as the marriage lasts. When a marriage is dissolved by grant or judgment, the husband may be compelled to make a contribution to his wife's maintenance, so long as she does not enter into a new marriage; provided that such obligation shall not be granted when the marriage is dissolved under the provisions of section 3, on the application of the husband; nor where the desertion, wholly or mainly, is attributable to misconduct on the part of the wife. In such cases the husband shall not be required to maintain her, unless on special grounds.

The contribution for maintenance shall be fixed and enforced in accordance with the rules which the law lays down with regard to the maintenance of wife and legitimate children. In fixing the amount, regard shall be had to the husband's means; and shall be made on the footing that, as far as possible, the wife is secured in an adequate maintenance—having in view the income which she herself has or may be presumed to earn for herself.

In a grant for suspension of conjugal relations, and in a grant or judgment for dissolution of marriage, the wife may, in exceptional cases, be compelled to make a contribution to the husband's maintenance when the latter is without means, and on account of illness or the like, must be regarded as unable to earn enough for his own maintenance, while the wife, owing to her having separate means, or in other ways, has secured an income which may be considered as more than sufficient for her own maintenance. Such a contribution must, in no case, be required when the marriage is dissolved on the wife's application, under the provisions of section 3; or where the dissolution of the marriage or the suspension of conjugal relations is due to fault on the part of the man. With regard to the mode of fixing and enforcing the contribution, and the duration of the liability to contribute the same rules apply as with regard to the husband's contribution to the wife's maintenance.

15. When it has been determined, in accordance with the rules with regard to the contribution for maintaining a wife and legitimate children, which of the spouses is to have the custody of the children after the conjugal relations have been suspended, or the marriage dissolved, regard must, in the first instance, be taken to the welfare of the children. Thus, they ought, especially when they are young, as a rule to follow the mother unless she be regarded as unfit to look after their upbringing. In addition, regard ought to be had to the wishes of the parents.

The parents are bound to contribute to the children's maintenance and upbringing in proportion to their means. The parent who does not fulfil his or her proportionate part of the burden for the maintenance or upbringing of a child of which he or she has the custody may be required to provide a yearly contribution for this or the other children. The contribution is fixed and enforced in accordance with the before-mentioned rules.

An agreement between the parents, with regard to the division of the children, or for the provision of maintenance, shall not prevent the duly constituted authority making other arrangements on the demand of either of the parents.

The above regulations make no change in the present rules, with regard to the obligation of parents to maintain their children, in case of necessity, in accordance with the provisions of the poor law.

16. With regard to the right of the one spouse to obtain a marriage dissolved by the judgment of the court when the other has disappeared, the provisions in the law of 12th October 1885, with regard to persons who have disappeared or are absent, shall continue to apply Provided that, at the trial of the action, the regulations of the present law—section 11—ought to be applied, so far as practicable

17. This law takes effect from 1st January next year, so that its regulations apply to the conduct and decision of applications for suspension of the conjugal relations, or for dissolutions of marriage, which are made after that date, notwithstanding that the grounds of action, wholly or partly, have arisen before the law came into force. Provided that dissolution of marriage, in terms of section 4, based on a crime committed earlier, can only take place if the act or the sentence would have given right to the dissolution of the marriage under the law as it formerly stood. In applying section 8, grants of separation *a mensâ et*

thoro by the magistrate in Christiania, in accordance with the Instruction of 14th September 1798, section 6 (*d*), are to be construed as equivalent to those of a duly constituted authority.

With regard to the results flowing from the suspensions of the conjugal relations, or dissolution of the marriage with regard to the spouse himself, obligation to maintain, and the custody and maintenance of the children, the regulation contained in this law shall come into effect if the suspension or dissolution takes place after the law has come into force.

The right to enter into a new marriage, for persons whose earlier marriage is dissolved by judgment or grant, must be determined according to the regulations contained in this law, when these have come into force, even if the dissolution has taken place before that date.

18. From the date when this law comes into force the following statutes are repealed, so far as they are still valid. (Here are enumerated a list of statutes and regulations.)

For We have adopted and confirm, like as We hereby adopt and confirm this resolution as law, under Our own hand and the seal of the Kingdom.

Given at the Palace at Christiania the 20th August 1909.

HAAKON.

TRANSLATION OF EXTRACTS FROM LETTER FROM HÖIESTERETSASSESSOR BULL, CHRISTIANIA.

The Law of 28th August 1909 is exhaustive in its enumeration of the grounds of divorce. Accordingly marriage can only be dissolved by Royal Grant (section 9) in the cases which are mentioned in sections 7 and 8. In all other cases the dissolution can only be effected by judicial decree, either in conjunction with criminal proceedings (where these relate to crimes which give right to the dissolution of the marriage), or in separate civil proceedings. This latter method (a civil action) may also be selected in the case of a crime which may be the foundation of divorce, and in respect of which criminal proceedings are being or have been taken.

The grounds upon which marriage can be dissolved by a judicial decree may be grouped as follows:—

I. Where one of the spouses has been guilty of (*a*) adultery (Criminal Code, section 209); (*b*) a serious offence against decency, such as rape and the like, immoral conduct with a child below 16 years, or with one's own ward or the like, incest, unnatural offences, &c. (*see* the Criminal Code, sections 191–199, 202–208, and 213); (*c*) bigamy (section 220); (*d*) the contracting and transmitting, or exposing any others to an infectious sexual disease which has been contracted in consequence of immoral conduct (section 155, first paragraph); (*e*) the following crimes, when they are committed for immoral reasons; abduction of children and minors from the care of their parents or guardians, &c. (*see* sections 216 and 217 and 223–225); (*f*) bodily injury, but not blows or the like, which do not cause any serious injury to the person of the other spouse (*see* Law of 1909; 4 (*c*)); (*g*) cruelty to children, or exposing them to conditions which are clearly dangerous to their morals (*see* 1909 (4) (*d*), and Criminal Code, section 380).

In all the cases under I. it is not necessary that any penal sentence should have been pronounced. It is sufficient if any of the grounds of divorce enumerated is established.

II. When the one spouse has been sentenced (*see* Law 1909, section 5)—(*a*) for any kind of crime which results in imprisonment for three years or more; (*b*) to an indefinite punishment under the provisions of the Criminal Code, section 65, which applies to persons who are specially dangerous to the community or to some individual; (*c*) repeated acts of vagrancy or drunkenness, where the sentence authorises the convicted person to be imprisoned with hard labour, or to be confined in an inebriate home.

III. Where the one spouse, at the time the marriage was entered into, suffered from any such defect as is enumerated in the Act of 1909, section 3 (*a*) to (*d*)

The law makes no exception in the case of both spouses having been unfaithful towards each other. In such cases each of the spouses has a right to have the marriage dissolved, even if the other does not consent. (On the other hand, it will be seen from the Law of 1909 that a spouse who has connived at any of the offences enumerated in I. and II. cannot demand a dissolution of the marriage on such grounds.)

APPENDIX VI.—RETURNS IN RESPONSE TO A CIRCULAR DESPATCHED TO ALL CLERKS TO

Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Liverpool	651	646	683	57	70	72	260	301	280	24	20	23	Was practice to make separation orders as a matter of course with maintenance orders, until the decision in Harriman *v.* Harriman. Since then in almost all the desertion cases, maintenance orders have been made without separation orders, but on other grounds separation orders granted as a matter of course.
			1907.			1908. 1909.							
Cockermouth	—	—	4	1	5	—	—	—	1	—	—	2	Yes. As a matter of course when applied for.
Bradford-on-Avon P.S.D.	2	3	1	—	—	—	—	—	—	1	2	1	Separation orders, when made, have been combined with maintenance.
Freebridge Lynn P.S.D.	1	—	2	—	—	—	1	—	2	—	—	—	——
			1907.			1908. 1909.							
Dursley and Whitminster P.S.D.	—	—	2	3	1	—	—	1	1	1	2	—	Only where safety of wife requires protection or there is some special reason.
			1907.			1908. 1909.							
Warrington	—	—	60	38	42	—	—	—	1	24	14	12	Yes. Unless on application to the contrary.
P.S.D.'s of Mold, Hope, Hawarden, and Northop.	12	14	3	—	—	—	—	—	—	7	7	1	Separation orders granted as a matter of course.
			1907.			1908. 1909.							
Berkeley P.S.D.	—	—	—	—	1	—	—	—	1	—	—	—	——
Bury	20	18	23	—	—	—	—	—	5	20	18	18	Up to recently practice to grant separation orders as a matter of course.
Hereford P.S.D.	1	2	1	—	—	—	—	1	—	1	1	—	Been the practice to grant separation orders with maintenance orders until the decision in *re* Harriman.
Grantham	7	4	1	—	—	—	—	—	1	2	3	—	Separations in all cases were granted, except the one in 1909.
Dacorum P.S.D. of Hertford.	5	2	3	—	—	—	—	—	—	3	3	—	It has been the practice to grant separation orders with maintenance orders.
			1907.			1908. 1909.							
Chichester	—	—	1	4	2	—	1	—	—	—	2	1	Only where the safety of the wife requires it.
Folkestone	4	—	—	—	—	—	—	—	—	3	—	—	It has been the practice to grant separation orders as a matter of course, along with maintenance orders.

JUSTICES THROUGHOUT ENGLAND AND WALES REQUESTING REPLIES TO THE FOLLOWING QUESTIONS:—

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		*Has it been proved* or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	*Whether in favour* of the present jurisdiction of the Justices *being transferred to the* County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
Through the court.	360 (The above figures are for the years 1907, 1908, and 1909.)	391	58	67	32	30 per cent.	50 per cent.	No	No.
No; direct	—	1	1	—	1	6 out of 10	1 out of 3	No	Yes.
Through the police or a mutual friend of both parties.	1	(3)		—	—	—	—	No	No.
Direct to wife	3	—	—	—	—	—	—	—	No.
To wife or person nominated by wife.	2	—	1	—	2	—	2 out of 5	No evidence either way.	No.
Neither, but sometimes through the police court missionary.	19 (These figures are for the years 1907, 1908, and 1909.)	11	4	12	5	Cannot say		No	No.
Direct	6	9	—	—	—	14	5	Aware of no specific instances.	No.
Direct	—	1	—	—	—	—	—	—	No reason for depriving justices of jurisdiction, but county courts should have jurisdiction in respect of divorce and concurrent jurisdiction in respect of separation orders.
Through the court.	26	24	7	4	—	5 per cent.	50 per cent.	In some cases, yes.	No.
No; direct	1	2	—	—	—	Have no knowledge		Have no knowledge.	Of opinion that magistrates more competent to deal with these cases than county court judges.
Direct to wife	2	3	1	—	—	Have no knowledge		Have no knowledge.	Of opinion that power of granting divorce should *not* be given to justices. If divorce laws extended locally, should be vested in county courts or assize.
Direct to wife	10 per cent.	60 per cent.	30 per cent.	—	—	Unable to say		No	No.
No	50 per cent.	50 per cent.	—	—	—	25 per cent.	Not known	No	No. Justices are better judges of humanity and acquainted with real needs of the parties.
Direct	—	1	2	—	—	—	1 out of 3	"Yes," in the case of the man, but "No" in the case of the woman The latter is aware that if she commits adultery subsequent to the date of the order the same would be discharged on the application of the husband.	Yes.

Returns in response to a Circular despatched to all Clerks to Justices

Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909	
Kesteven P.S D. of Lincoln.	—	2	1	—	—	—	—	—	—	—	1	—	Practice to grant separation orders along with maintenance orders.
			1907.	1908.	1909.				1907.	1908.	1909.		
Stroud P.S.D. -	—	—	4	2	2	—	—	—	1	1	1	—	——
Lancaster - -	10	8	9	1	—	—	—	—	2	4	4	6	Since 1909 it has been the practice in cases of desertion to grant only maintenance orders, except in cases where wife requires protection.
			1907.	1908.	1909.								
Leicester P.S.D. -	—	—	6	6	6	—	—	—	—	5	3	2	Usual practice to grant separation orders when an order has been made.
			1907.	1908.	1909.								
Matlock P.S.D. -	—	—	(	10	)	—	—	—	—	(	4	)	Yes - - - - - - -
			1907.	1908.	1909.								
Salisbury - -	—	—	1	6	—	—	—	—	—	1	4	—	In all cases separation orders were asked for and granted.
Market Harboro' -	—	—	—	(	3	)	—	—	—	(	3	)	Only where safety of wife requires it.
Oldham - -	114	124	74	—	—	—	—	—	—	112	112	73	Orders invariably made for maintenance and separation combined.
Bulmer P.S.D. of N.R. of Yorks.	—	—	—	—	—	—	—	—	—	—	—	—	——
			1907.	1908.	1909.								
Buxton - -	—	—	(	3	)	—	(	2	)	(	3	)	Separation orders granted only in special cases.
			1907.	1908.	1909.								
Sunderland - -	—	—	102	68	86	—	—	—	—	74	49	36	It has *not* been the practice to grant separation orders as a matter of course along with maintenance orders.
			1907.	1908.	1909.				1907.	1908.	1909.		
Bridgend - -	About		30	40	40	—	About		20	30	30	—	Usually orders for maintenance alone are made.
Nailsworth P.S.D. -	1	—	1	—	—	—	1 (separation only.)	—	1	—	—	—	Not as a matter of course—it depends upon the facts of the case.
			1907.	1908.	1909.								
Devizes P.S.D. -	—	—	—	2	1	—	—	—	—	—	1	1	——
Launceston - -	(	2	)	—	—	—	—	—	—	—	—	—	Separation orders not granted unless the safety of the wife requires it.
Braunton P.S.D. of Devon.	3	2	2	—	—	—	1 (1 separation only.)	—	1	1	1	1	Not as a matter of course—depends upon circumstances of the case.
			1907.	1908.	1909.								
Cumberland Ward P.S.D.	—	—	1	1	3	—	—	—	—	—	1	3	Yes, separation orders combined with maintenance.
Peterborough P.S.D. and Norman Cross P.S.D.	5	7	4	—	—	—	—	4	2	5	3	2	Not as a matter of course - -
Scilly Isles - -	1	—	2	—	—	—	—	—	—	1	—	1	Maintenance orders given with separation order unless unnecessary.
Samford P.S.D. of Suffolk.	—	—	1	—	—	—	—	—	—	—	—	1	——
Lawford's Gate P.S.D. of Gloucester.	16	6	8	—	1	—	—	—	—	12	4	6	Separation orders *not* granted as a matter of course.
			1907.	1908.	1909.				1907	1908.	1909.		
Southampton P.S.D.	—	—	12	19	14	—	—	—	6	9	4		Usual practice to grant separation orders along with maintenance orders as a matter of course.
Guiltcross and Shropham P.S.D.'s of Norfolk.	2	1	6	—	—	—	—	—	—	1	1	3	Separation orders only made where safety of wife requires it.
									1907.	1908.	1909.		
Birmingham - -	201	225	195	—	—	—	—	—	164	179	144	—	Since the decision in Harriman *v.* Harriman maintenance orders on the ground of desertion are only granted where the safety of the wife requires such protection.

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in *which Parties resume* Cohabitation.		*Has it been proved or is there reason to suppose that the* Grant of Orders of Separation leads to Immorality?	*Whether in favour of the present jurisdiction of the* Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
Usual practice to order payment direct.	—	—	1	—	—	2	—	No	These proceedings being of a civil nature might well be transferred to the county court.
—	1	1	—	1	—	—	—	No	No.
No	7	5	—	—	2	Have no knowledge		No	No.
Direct	9	7	1	1	—	In a large proportion of cases the parties resume cohabitation.		Of opinion that there is a tendency to immorality caused by orders when parties do not come together again.	No.
No	—	4	—	—	—	5 out of 10	2 out of 4	No	Yes
Direct to wife	1	2	1	1	—	Have no knowledge.	Only know of 2 cases in which cohabitation was resumed.	No	No.
Usually through police.	1	1	—	—	1	—	2	No	No.
Direct	121	144	18	8	6	20 per cent.	50 per cent.	No	Yes.
—	—	—	—	—	—	—	—	—	Yes.
Direct	2	3	—	—	—	None	About half	—	—
No	19	14	2	—	1	One-third	Two-thirds	No	No.
	(These figures are for the year 1909.)								
Direct to wife	45 per cent.	45 per cent.	4 per cent.	4 per cent.	2 per cent.	40 per cent.	40 per cent.	Have no proof	No.
Direct	—	—	2	—	—	Have no knowledge		No	Yes.
—	—	1	—	1	—	—	1 out of the 2 cases.	—	Yes.
Through the court	—	—	—	—	—	—	—	Of opinion that granting separation orders leads to immorality.	No.
Direct	3	2	—	—	1	1 during last 3 years.	—	No	No.
Paid through applicants' solicitors.	3	—	1	—	—	Have no knowledge		Have no proof	No.
Direct	9	4	3	—	—	—	Only know of 2 cases.	No	No.
Through an officer of the court.	—	2	—	—	—	One-third	One-third	No	—
Direct to wife	—	—	—	—	—	—	—	No	No.
—	14	3	13	1	—	4	6 (about)	No	No.
Direct	—	—	—	—	—	—	—	—	—
Generally direct	—	2	2	—	1	4 out of 9	—	Have no proof	No.
Direct	70 per cent.	25 per cent.		5 per cent.		Cannot say	At least 15 per cent.	—	Present jurisdiction of the justices efficient. Not desirable that courts of summary jurisdiction should be empowered to grant a divorce.

Returns in response to a Circular despatched to all Clerks to Justices

Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Westbury P.S.D.	—	—	1907. ( )		1908. 4	1909. —	—	—	—	( )			Separation orders only granted where safety of wife requires it.
Marlborough and Hungerford P.S.D.	1	1	1	—	1	—	—	—	—	—	1	—	Separation granted where safety of wife requires it.
Bingham P.S.D.	1	2	1	—	—	—	—	—	—	—	1	1	Since the decision in the case Harriman *v.* Harriman the attention of justices has been called to that case in dealing with applications.
Basingstoke	—	2	—	—	—	—	—	—	—	—	2	—	Has been the practice to grant separation orders as a matter of course. Intends in future to advise justices to grant them only where safety of wife requires it.
Chertsey P.S.D.	—	—	1907. 5	1908. 6	1909. 3	—	2	2	—	1	2	2	Separation orders only granted where safety of wife requires it.
Bilston	—	—	1907. 23	1908. 14	1909. 27	—	—	—	1907. 8	1908. 5	1909. 14	—	Separation orders granted as a matter of course along with maintenance orders.
Newport (Salop) P.S.D.	2	3	1	—	1	—	—	—	—	1	2	—	Separation orders always been granted.
Evesham	—	1	1	—	—	—	—	1	—	—	—	—	Separation orders only granted where safety of wife requires it.
Evesham P.S.D.	1	4	1	—	—	—	—	2	—	—	1	—	
Houghton-le-Spring P.S.D.	27	36	25	1	1	—	—	—	11	15	18	2	Separation orders recently granted only where the safety of the wife requires it.
Congleton P.S.D.	—	—	1907. 2	1908. 2	1909. 2	—	—	No orders made				—	Separation orders only granted where safety of wife requires it.
Croydon P.S.D.	4	6	3	—	—	—	—	—	1907. 4	1908. 6	1909. 2	—	Bench been recently advised to grant separation orders only where safety of wife requires it.
Kingston-on-Thames.	3	6	11	1	3	1	—	—	—	4	8	10	The woman almost invariably asks for and receives a separation order when she makes out her case. In suitable cases attention is called to the decision in Dodd *v.* Dodd.
Sheffield	—	—	1907. 289	1908. 312	1909. 255	—	—	1	96	144	174	67	Separation orders only granted where safety of wife requires it.
Halifax P.S.D.	9	14	13	—	—	—	2	3	3	—	—	3	Ditto
Kenilworth P.S.D.	2	1	1	—	—	—	2	1	1	—	—	—	Ditto
Leicester	83	75	78	5	2	1	31	13	32	38	36	19	Latterly, separation orders only granted when the safety of the wife requires it.
Retford	1	9	7	—	—	—	—	—	5	—	6	—	Had been the practice up to 1909 to grant separation orders as a matter of course along with maintenance orders.
Cerne (Dorset) P.S.D.		(	2		)		—	—	—	(	1	)	Separation orders only granted where safety of wife requires it.
South Aylesford P.S.D.	—	—	—	—	—	—	—	—	—	—	—	—	Bench exercise discretion
Wolsingham P.S.D.	(	5	)	(	1	)	(	1	)	—	—	—	Separation orders usually granted most of cases been on the ground of cruelty.
Blaenau Festiniog P.S.D.	—	—	1907. —	1908. —	1909. 2	—	—	—	—	—	—	2	Justices exercise discretion
Ludlow	—	—	1907. 2	1908. 3	1909. —	—	—	—	—	2	3	—	Separation orders granted with maintenance.
Spelthorne	—	—	1907. 10	1908. 9	1909. 8	—	—	—	—	7	9	6	Separation orders granted with maintenance orders as a matter of course.
Kirton and Skirbeck P.S.D. (Lincolnshire).	3	3	4	1	—	—	(1 separation only; no allowance).			2	3	1	Separation orders granted as a matter of course with maintenance orders.
Axminster P.S.D.	—	—	1907. 1	1908. 1	1909. 1	—	—	—	—	1	1	1	——
Edeyrnion P.S.D. of Merioneth.	—	—	1907. —	1908. 1	1909. —	—	—	—	—	—	1	—	Separation orders granted with maintenance orders.

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
—	—	3	—	—	—	None have resumed cohabitation.		No	No.
Direct	—	—	1	—	—	1	—	No	No.
Direct	—	2	—	—	—	2	—	—	—
Direct	—	—	—	—	2	Neither have resumed cohabitation.		No	No.
Direct	4	2	1	—	2	No knowledge		There is reason to suppose that separation orders between young people leads to immorality.	No.
No	15	10	1	—	—	21	Cannot say	No	No.
Usually direct, never through police.	1	1	1	—	—	3	—	No evidence	No.
No	—	1	—	—	—	—	—	No	No.
	1	1	1	—	—	No knowledge			
Direct	30	13	1	—	1	29	12	No	No.
Direct	1 (The six summonses were issued on above grounds.)	2	—	—	3	—	—	No	No.
—	6	2	1	—	3	—	—	—	Yes.
Generally direct, but through the court if desired.	10	5	4	5	1	50 per cent.	40 per cent.	No	No.
No	285 (Cruelty and neglect 42)	119	25	9	2	268	About 40 per cent.	Yes	No.
Neither	8	3	—	—	—	9	1	No	No.
No	Equally divided					—	—	No	No.
No	89	44	19	8	9	About 75	About 35	No	No.
No	3	6	2	—	—	(About 1 in 3)		No	No.
—	—	—	1	—	—	1	—	No	No.
Direct	Majority of orders made for cruelty, neglect, and desertion.					—	—	No	Yes.
Direct	—	1	—	—	—	5 out of 6	—	—	No.
Through the clerk	1	—	1	—	—	—	—	No	Yes.
—	(5)		—	—	—	—	—	No	No.
Direct	10	6	5	1	—	—	—	No	No.
Wishes of complainant usually complied with.	1	6	2	1	1	—	—	No	No.
Direct	—	3	—	—	—	—	—	No	No.
Police	—	—	—	1	—	—	After orders, if at all,	—	Yes.

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Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Rugby P.S.D.	—	—	1907. 1	1908. 9	1909. 12	—	—	—	1	1	4	5	Separation orders only granted when asked for by wife.
Ilminster P.S.D.	—	—	1907. —	1908. 2	1909. 1	—	—	—	1	—	2	—	Separation orders granted as a matter of course along with maintenance orders until last year.
Dewsbury P.S.D.	—	—	1907. 12	1908. 26	1909. 20	—	1	4	8	8	7	3	Separation orders granted as a matter of course in cases of persistent cruelty.
Henley-in-Arden P.S.D.	2	1	2	—	—	—	—	—	—	1	—	—	Separation orders granted as a matter of course with maintenance orders.
Langbaurgh East (N.R. of Yorkshire) P.S.D.	—	—	1907. 7	1908. 7	1909. 7	—	1	—	2.	4	3	4	Separation orders only granted where safety of wife requires it.
Spalding	—	—	1907. —	1908. 1	1909. 4	—	—	—	1907. —	1908. 1	1909. 1	—	Each case taken on its merits
Bridgwater	5	10	8	—	—	—	2	4	1	—	2	1	Only where safety of wife requires protection.
Altrincham P.S.D.	—	—	1907. 17	1908. 19	1909. 13	—	—	—	1	10	11	6	Usually granted together
Pembroke Dock	4	1	3	—	—	—	—	—	—	2	1	1	Ditto
Lutterworth P.S.D.	—	—	1907. (1)	1908.	1909.	—	—	—	—	(1)			Ditto
Wednesbury	—	—	1907. 9	1908. 11	1909. 11	—	—	—	—	5	5	8	Granted together
Eddisbury P.S.D.	5	3	4	1	—	—	—	—	1	2	1	3	Separation orders only granted where safety of wife requires it.
Saddleworth (N.R. of Yorkshire) P.S.D.	—	—	1907. 4	1908. 6	1909. 5	—	—	—	—	3	3	2	Granted together
Middleton P.S.D.	6	6	5	1	—	—	1 (separation only)	—	2	3	4	—	Since the decision in Harriman *v.* Harriman separation orders only granted where safety of wife requires it.
Wakefield	30	20	32	—	—	—	—	—	1907. 18	1908. 11	1909. 16	—	Ditto
Stoke-upon-Trent	11	16	8	—	—	2	2	8	9	7	4	—	Ditto
Howden P.S.D.	3	3	6	—	—	—	—	—	1907. 3	1908. 1	1909. 3	—	Separation orders only granted where safety of wife requires it.
Glossop	1	—	5	—	—	—	—	—	4	—	—	—	Yes, formerly, but not recently
Chapel-en-le-Frith P.S.D.	—	—	1907. —	1908. 3	1909. 5	—	—	—	—	—	3	4	Separation orders, as a rule, made along with maintenance orders.
Newark	1	3	5	—	—	—	—	—	1	1	2	2	Since the observations in Dodd *v.* Dodd separation orders only granted when required.
Menai Bridge P.S.D.	5	6	4	—	—	—	1	2	—	—	3	2	Separation orders only granted when circumstances seem to call for same.
Durham	7	18	9	1	—	—	—	—	—	5	8	6	Separation orders granted with maintenance orders as a matter of course.
Jarrow	—	—	1907. 56	1908. 51	1909. 34	—	—	—	—	23	17	14	Ditto
Tynemouth	44	47	44	—	—	—	2	12	7	23	21	12	Separation orders only made where safety of wife requires protection.
Rochester P.S.D.	9	7	13	—	—	1	—	—	3	8	3	8	Until about June, "Yes," but no separation orders are now made in desertion cases.
Bromley, Kent	—	—	1907. 13	1908. 10	1909. 14	—	—	—	1907. 6	1908. 6	1909. 6	—	Separation orders granted as a matter of course with maintenance orders.
Lower Agbrigg P.S.D. of W.R. of York.	28	28	39	1	—	—	4	6	5	10	11	11	Since the decision in Harriman *v.* Harriman separation orders only granted where safety of wife requires it.
Wigan P.S.D.	86	82	55	1	1	1	—	—	—	38	37	27	Separation orders granted as a matter of course with maintenance orders.
Conway	2	4	3	—	—	—	—	—	1907. 2	1908. 4	1909. 2	—	Separation orders granted where safety of wife requires protection.

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
Direct	About equal					About half		No	No.
Direct	1	—	—	—	2	—	1	No	No.
Direct	21	7	3	—	—	Cannot say		No	Yes.
No, neither	1	—	—	—	—	3	—	Yes	No.
Neither	5	8	1	—	—	7	—	No	Yes.
Neither	—	1	1	—	—	—	1	No	No.
Generally direct	3	4	3	—	—	9	6	No	No.
Direct	10	7	6	1	4	13	About one-third.	No	No.
Direct	1	3	—	—	—	4	2	No	No.
No, neither	1	—	—	—	—	—	1	No	No.
Direct	7	5	2	3	1	No		No	No.
Direct	1	3	2	—	1	6	—	No	No.
Direct	2	4	1	1	—	—	—	No	No.
Direct	5 in 10	4 in 10	—	1 in 10	—	5	—	—	No.
Direct	19	25	1	—	—	31	29	—	No.
No	18	13	2	2	2	Probably 1 in 6	—	No	No.
Direct	3	3	1	—	—	4	1	No	No.
No	3	—	1	—	—	—	—	—	No.
Direct	3	2	2	—	—	1	About 50 per cent.	No	No.
No	2	5	1	—	—	—	—	No	No.
—	One-third.	Two-thirds.	—	—	—	One-third	—	No	No.
Direct	8	10	—	1	—	—	—	No	No.
No	15	27	4	1	7	—	—	No	No.
No	41	24	6	—	6	—	—	No	No.
In most cases through the police, never through the court.	9	12	—	1	—	About 7 out of 30.	—	No proof	No.
Direct	4	12	1	1	—	12	—	No	No.
Direct	15	28	3	1	—	43 out of 96.	—	No	No.
Direct	43	45	12	2	1	110	—	No	No.
No	3	5	—	—	—	Small proportion.	No	No proof	No.

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	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Seaham Harbour P.S.D.	12	18	29	—	—	—	—	—	1907. 9	1908. 13	1909. 15	—	Separation orders granted as a matter of course with maintenance orders.
Ipswich	—	—	1907. 13	1908. 11	1909. 10	—	—	—	3	9	8	5	Separation orders only granted where safety of wife requires it.
West Castle Ward P.S.D., county of Northumberland.	—	—	1907. 51	1908. 27	1909. 30	—	—	—	—	18	14	12	Separation orders granted as a matter of course with maintenance orders.
Allerdale - above - Derwent P.S.D.	—	—	1907. 20	1908. 15	1909. 15	—	4	1	5	4	3	5	Separation orders only granted where safety of wife requires protection
Blackburn P.S.D.	19	13	10	—	—	—	—	—	1	8	8	4	Ditto
Worcester	—	—	1907. 13	1908. 13	1909. 12	—	—	—	1907. 13	1908. 10	1909. 8	—	Ditto
Burnley	—	—	1907. 93	1908. 79	1909. 82	—	—	—	8	64	55	47	Since the decision in Harriman *v.* Harriman separation orders only granted where safety of wife requires protection.
Kidderminster	—	—	1907. 5	1908. 7	1909. 8	—	—	—	—	4	5	6	Separation orders granted as a matter of course.
Kidderminster P.D.S.	—	—	1907. 1	1908. 2	1909. 2	—	—	—	—	—	2	1	Ditto
Crewe	—	—	1907. 27	1908. 19	1909. 19	—	5	6	3	3	4	7	Separation orders only granted where safety of wife requires protection.
Abergavenny	—	—	1907. 6	1908. 2	1909. 6	—	—	—	—	2	—	1	Ditto
Scarborough	39	30	26	2	1	2	5	4	8	7	11	7	Ditto
Loughborough P.S.D.	—	—	1907. 10	1908. 10	1909. 6	—	—	—	—	9	8	5	Separation orders granted with maintenance orders as a matter of course.
Droxford P.S.D.	—	—	1907. 1	1908. 1	1909. 3	—	—	—	—	1	—	2	Ditto
Ledbury P.S.D.	—	4	2	—	—	—	—	1	—	—	3	2	Separation orders only granted where safety of wife requires it.
Louth	—	—	2	—	—	—	—	—	2	—	—	—	Ditto
Chatteris P.S.D.	—	—	1907-8-9. (5)			—	—	—	—	1907-8-9. (1)			Separation orders granted as a matter of fact with maintenance orders.
Sunderland P.S.D.	24	24	21	1	—	—	—	—	—	15	9	12	Ditto
Bromsgrove P.S.D.	—	—	1907-8-9. (12)			—	—	—	—	1907-8-9. (6)			Separation orders granted according to facts of each case.
Newport, Mon.	—	—	1907. 10	1908. 10	1909. 9	—	—	—	—	9	9	9	Separation orders granted with maintenance orders as a matter of fact.
Alcester P.S.D.	—	—	1907-8-9. (3)			—	—	—	—	1907-8-9. (3)			Separation orders granted according to facts of each case.
Boston	9	2	9	—	1	—	—	—	3	3	2	2	Latterly, separation orders only granted where safety of wife requires protection.
Exeter	12	12	9	—	—	—	2	3	3	7	7	4	Ditto
Orsett P.S.D., Essex	7	9	8	—	—	—	—	—	—	3	4	4	Separation orders granted as a matter of course in all cases.
Hyde	35	30	25	3	1	3	—	—	5	26	23	10	Separation orders only granted where safety of wife requires protection.
Pontypool P.S.D.	—	—	1907. 18	1908. 19	1909. 11	—	1	1	—	7	7	4	Separation orders granted with maintenance orders as a matter of course.
Sleaford P.S.D.	—	—	1907. 5	1908. 1	1909. 5	—	—	—	—	3	—	4	Ditto
Dorchester	—	—	1907. 1	1908. 1	1909. 1	—	—	—	—	1	—	1	—
Dorchester P.S.D.	—	—	1907. 2	1908. 1	1909. 3	—	—	—	—	1	1	—	—

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Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.: –					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
No	—	—	—	—	—	—	—	No	No.
Sometimes through the court, but never through police.	15	7	1	1	1	—	—	—	—
No	13	29	1	—	1	—	—	No	No.
Direct	13	3	1	—	5	Rather more than half.	—	No	No.
Direct	6	7	5	2	1	—	—	Of opinion, yes	No.
Never through police, but through court upon request.	16	9	1	4	1	—	—	No	No.
Direct	50 per cent.	33 per cent.	13 per cent.	2 per cent.	2 per cent.	About 25 per cent.	From 20 per cent. to 30 per cent.	Yes	No.
No	8	2	3	—	2	—	—	No	No.
No	1	—	—	—	2	—	—	No	No.
Direct	14	6	4	—	4	28 out of 63	—	No	No.
Direct	—	3	—	—	—	50 per cent.		No	No.
Direct	13	14	14	—	1	—	70 per cent.	Not to any great extent.	No.
Direct	7	11	1	1	2	1	9	No	—
No	—	3	—	—	—	No		Cannot say	—
Direct	1	4	1	—	—	None		No	No.
Direct	2	—	—	—	—	1	—	No	No.
Through police	1	—	—	—	—	2	1	—	—
No	19	13	3	1	—	—	—	No	Yes.
Direct	4	1	1	—	—	4	4	No	No.
Direct	13	14	—	—	—	About 9 out of 10.	—	Yes	Yes.
Direct	—	3	—	—	—	—	2	No	No
Through police	10 per cent.	50 per cent.	10 per cent.	10 per cent.	20 per cent.	About 14 per cent.	100 per cent.	No	No
Generally direct	13	10	1	1	1	1	2	No	No.
Direct	5	1	—	—	5	About half	—	—	No.
Through the clerk.	36	44	9	7	1	14	—	—	No.
Direct	—	—	—	—	—	—	—	No	Yes.
Direct	1	3	—	2	1	1	1	No	—
Direct	1	—	—	—	1	—	1	—	No.
Direct	1	1	—	—	—	2	—	—	No.

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	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Redditch P.S.D.	6	13	5	1	—	—	—	—	—	5	13	3	Separation orders granted with maintenance orders as a matter of course.
			1907.	1908.	1909.								
Carnarvon	—	—	6	3	2	—	—	—	—	2	2	—	Ditto
Hereford	20	16	6	—	—	—	—	—	—	5	2	1	Separation orders only granted where safety of wife requires protection.
			1907–8 9.							1907–8–9.			
Tywardreath P.S.D of Cornwall.	—	—	(1)			—	—	—	—	(1)			Ditto
Bingley	(16)			(1)			(3)			(6)			Ditto
			1907–8–9.							1907–8–9.			
Rhyl P.S.D.	—	—	(13)			—	—	—	—	(5)			Separation orders granted as a matter of course with maintenance orders.
Leamington	3	7	6	2	2	—	—	—	2	5	9	3	Separation orders only granted where safety of wife requires protection.
									1 (separation only).				
Llanelly	26	22	20	—	—	—	4	3	6	8	4	5	Ditto
									1 (separation only).				
Forehoe P.S.D. of Norfolk.	—	2	3	—	—	—	—	1	1	—	—	—	Ditto
			1907.	1908.	1909.				1907.	1908.	1909.		
Roose-and-Dungleddy P.S.D.'s of Pembroke.	—	—	10	6	5	—	—	—	3	4	5	—	——
			1907.	1908.	1909.				1907.	1908.	1909.		
Carlisle	—	—	16	8	5	—	—	—	8	5	3	—	Separation orders generally
Allerdale-below-Derwent P.S.D.	1	5	2	—	—	—	—	—	—	1	2	1	Separation orders granted as a matter of course with maintenance orders.
Blofield and Walsham P.S.D.'s.	1	—	1	—	—	—	—	—	1	1	—	—	Only where safety of wife requires it.
Reading	10	16	19	—	—	—	1	2	8	7	11	8	Ditto
			1907.	1908.	1909.				1907.	1908.	1909.		
Ashton-under-Lyne	—	—	34	58	42	—	—	—	20	33	25	—	Ditto
			1907.	1908.	1909.				1907.	1908.	1909.		
Ashton-under-Lyne P.S.D.	—	—	24	41	30	—	—	—	11	24	17	—	Ditto
Brynmawr P.S.D.	2	7	4	—	—	—	—	—	—	2	7	4	Separation orders granted with maintenance orders as a matter of course.
			1907.	1908.	1909.								
Beacontree P.S.D.	—	—	57	67	59	—	8	10	14	14	17	15	Only where safety of wife requires it.
									1907.	1908.	1909.		
Stockton-on-Tees	83	75	83	—	—	—	—	—	45	29	43	—	Separation orders granted as a matter of fact with maintenance orders.
									1907.	1908.	1909.		
Stockton Ward P.S.D.	5	6	10	—	—	—	—	—	1	3	6	—	Ditto
									1907.	1908.	1909.		
Thornaby Yarm P.S.D.	8	10	15	—	—	—	—	—	3	1	10	—	Ditto
			1907.	1908.	1909.								
Llanrwst P.S.D.	—	—	6	3	1	—	1	—	—	—	1	1	Cases considered on their merits
			1907.	1908.	1909.								
Brecon	—	—	6	2	1	—	—	—	—	3	1	—	Only where safety of wife requires it.
			1907.	1908.	1909.					1907–8–9.			
Kibbor P.S.D.	—	—	3	7	5	—	—	—	—	(9)			——
Blackburn	131	133	120	1	2	2	—	108	111	122	17	2	Separation orders only granted where safety of wife requires protection.
East Staincliffe P.S.D. of W.R. of York.	7	9	3	—	—	—	—	1	1	4	5	1	Separation orders granted with maintenance orders as a matter of course.
			1907.	1908.	1909.								
Hastings	—	—	10	12	11	—	—	—	—	10	12	11	Ditto
Rochdale	52	64	51	1	2	2	—	—	2	30	32	30	Separation orders granted along with maintenance orders as a matter of course.
			1907.	1908.	1909.								
Mortlake P.S.D.	—	—	5	7	6	—	2	2	1	—	1	1	Separation orders only granted where safety of wife requires it.
Rossendale P.S.D. of Lancs:—													
Bacup	12	12	7	—	—	—	—	—	—	8	9	5	Separation orders granted along with maintenance orders as a matter of course.
Rawtenstall	12	11	11	—	—	—	—	—	1 (separation only).	7	4	8	
Haslingden	6	4	5	—	—	—	2 (separations only)	1	—	1	2	3	

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
Direct	(	19	)	1	1	—	9	Of opinion "Yes."	No.
Direct	1	1	1	1	—	—	—	—	Yes.
Direct	4	2	2	—	—	25	3	Of opinion "Yes."	No.
Police	—	—	—	—	1	—	1	No	No.
Direct	7	2	—	—	—	7	4	Yes	No.
Direct	1	2	2	—	—	—	—	No	No.
Direct	8	6	—	4	2	—	—	Yes	No.
Direct	42 per cent.	52 per cent.	6 per cent.	—	—	28 per cent. at least.	12 per cent. at least.	No	No.
Direct	—	Great majority.	In all other cases.	—	—	—	About one-sixth.	Yes	No.
—	2	8	1	—	—	—	—	—	—
Either, or direct	3	8	4	—	1	—	About one-half.	No	No.
Solicitor	2	2	—	—	—	3	1	No	No.
Direct	—	Great majority.	In all other cases.	—	—	—	About one-sixth.	Yes	No.
Direct	23	8	3	2	1	—	About 50 per cent.	No	No.
Direct	34	27	2	5	10	40	About 50 or 60 per cent.	No	No
Direct	16	21	6	2	7	35	About 50 or 60 per cent.	No	No.
Direct	5	8	—	—	—	—	5	No	No.
Direct	32	21	13	3	8	—	—	No	No.
Direct	17	49	40	1	10	25	47	No	No.
Direct	2	7	1	—	—	—	1	No	No.
Direct	5	4	5	—	—	13	1	No	No.
No	1	1	1	—	—	Probably one-half to two-thirds.	—	No information	No
Direct	1	2	—	1	—	—	—	Yes	If a question of obtaining a divorce, "Yes." Doesn't mind.
Direct	4	4	1	—	—	—	—	—	
Direct	228	58	53	3	18	Very few	About one-third.	—	No.
Direct	8	3	1	—	—	—	—	No	No.
Direct	21	8	4	1	—	Very rarely	About 33 per cent.	Yes	No.
Direct	18	12	2	—	—	16 out of 53	—	No	No.
Direct	5	—	1	1	—	5 out of 18	—	No	No.
Police	6	6	1	—	9	9	14	No	No.
Police	1	16	1	—	2	14	8	No	No.
Police	—	7	—	2	—	6	7	No	No.

(These figures were for the year 1909.)

Returns in response to a Circular despatched to all Clerks to Justices

Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Darlington	—	—	31	19	14	—	7	1	1	10	5	2	Separation orders granted in all cases except "desertion."
Newcastle-upon-Tyne.	177 summonses issued, 123 applications heard in court.						—	—	49	—	—	45	No. Only when necessary for protection of wife.
Halifax	25	16	27	—	5	2	—	2	5	12	6	10	Not as a matter of course. If a separation order is asked for it is invariably granted.
Bristol	Number of applicants for summonses for the last five years not less than 700 per annum.						Number of summonses granted and issued, about 200 per annum.						Number of cases heard by justices, about 150 per annum.
	Number of orders of separation made on an average of five years, about 140 per annum.												
Abingdon (Berks)	None.						—	—	—	—	—	—	—
Manchester (County).	—	—	—	—	—	—	—	—	—	—	—	—	Before decision in *re* Harriman *v.* Harriman a non-cohabitation clause was inserted in orders, but not since that decision, unless the court has been satisfied that the wife's safety has been in peril.
Linton P.S.D. (Cambs).	—	—	—	—	—	—	—	—	—	—	—	—	—
Tunbridge Wells	Average of four or five cases a year at the outside.						Orders made for separation and maintenance combined in nearly every case.						Practically every case is based on the cruelty of husband.
Tetbury P.S.D.	—	—	1907-8-9. (1)			—	—	—	1907-8-9. (1)			—	—
Erpingham (North) P.S.D. of Norfolk.	—	—	—	—	—	—	—	—	—	—	—	—	—
Earsham P.S.D., Norfolk.	—	—	—	—	—	—	—	—	—	—	—	—	—
Tamworth Borough and P.S.D.	1	—	1	—	—	—	—	—	—	1	—	1	—
Manchester	The Stipendiary Magistrate being a member of the Commission, and the Chief Constable President of the Chief Constables' Society, and expecting to give evidence before the Commission, these statistics have been prepared for them and will be presented by them to the Commission.												Yes. An order for separation is usually asked for and granted.
Wantage P.S.D.	—	—	1907-8-9. (1)			—	—	—	1907-8-9. (1)			—	—
Taunton P.S.D.	—	—	—	—	—	—	—	—	—	—	—	—	Not the practice to grant separation orders as a matter of course along with maintenance orders.
Huntingdon P.S.D.	—	—	—	—	—	—	—	—	—	—	—	—	—
South Greenhoe and Grimshoe P.S.D.'s of Norfolk.	—	—	1907-8-9. (4)			—	—	—	1907-8-9. (—)			—	—
Keynsham P.S.D. of Somerset.	None						None						According to circumstances
Pickering Lythe, East, P.S.D. (N.R. of Yorks).	—	—	—	—	—	—	—	—	—	—	—	—	—
Ringwood, P.S.D.	—	1	1	—	—	—	—	—	—	—	—	—	—
Haug West P.S.D. of N.R. of Yorks.	—	—	—	—	—	—	—	—	—	—	—	—	—
Ruthin	—	—	—	—	—	—	—	—	—	—	—	—	Separation orders granted with maintenance orders.
High Wycombe	—	—	—	—	—	—	—	—	—	—	—	—	—
Haywards Heath	—	—	1907-8-9. (3)			—	—	—	1907-8-9. (1)			—	—
Brackley P.S.D.	—	—	—	—	—	—	—	—	—	—	—	—	Separation orders only granted where safety of wife requires protection.
Bootle P.S.D. of Cumberland.	—	1	—	—	—	—	—	—	—	—	1	—	—
Whitby P.S.D.	2	1	1	—	—	—	—	—	—	1	—	—	—
Coleshill P.S.D. of Warwick	—	—	1907-8-9. (5)			1907-8-9. 1	—	—	1907-8-9. (1)			—	Separation orders granted as a matter of course along with maintenance orders.

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
Direct	9	15	1	1	—	27	1	—	No.
Through court officer.	44	32	11	2	5	Approximately 30 per cent.	Possibly 70 to 75 per cent.	No	No.
Through the police in some cases. Generally direct.	22	6	6	1	—	About 43 per cent.	No information.	No knowledge	No.
Through court officer.	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—
If so desired, at a police office.	—	—	—	—	—	—	—	No evidence	No.
—	—	—	—	—	—	—	—	—	Yes; with extended powers.
—	—	—	—	—	—	—	1	No evidence	No.
Direct	1	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	No.
—	—	—	—	—	—	—	—	—	No.
Parties make their own arrangements.	—	—	—	—	—	No information		No information	No.
No.	(*See* answer to 1 and 2)					No; but about a third of the summonses never come to a hearing.		The living apart of husbands and wives undoubtedly leads to immorality.	No.
—	—	1	—	—	—	—	—	—	No.
Police.	—	—	—	—	—	—	—	No reason to suppose so.	No.
—	—	—	—	—	—	—	—	—	Yes.
—	—	—	—	—	—	—	—	—	Yes.
Direct	—	—	—	—	—	—	—	No	No.
—	—	—	—	—	—	—	—	—	No.
—	—	—	—	—	—	—	—	No	Civil court the proper tribunal.
—	—	—	—	—	—	—	—	—	No.
Direct	—	—	—	—	—	—	—	—	Yes.
—	—	—	—	—	—	—	—	—	Yes.
Direct	2	—	—	1	—	—	—	—	No.
Direct	—	—	—	—	—	—	—	—	No
—	1	—	—	—	—	—	—	—	—
—	1	—	—	—	—	—	—	—	—
Direct	3	2	—	1	—	4	—	No	No.

APPENDIX VII.

SUPPLEMENTAL STATEMENT BY THE GENERAL COUNCIL OF THE BAR.

Royal Commission on Divorce and Matrimonial Causes.

Winchester House,
21, St. James' Square, S.W.,
12th April 1910.

DEAR BINGLEY,

IN the Report of the General Council of the Bar prepared for the purpose of the Chairman giving evidence before the Commission attention is drawn in paragraph 4, sec. (4), to "The present congested con- "dition of business in many of the county courts, "the difficulty of obtaining continuity of trial, and the "consequent expense," and in the evidence of the Chairman that matter is dealt with. It has been suggested that it would be of considerable assistance to the Commission if you, on behalf of the Chairman and council, could send me the names of those county courts to which that paragraph refers, and such statistics or other facts as led the council to arrive at that conclusion.

Yours very truly,
H. GORELL BARNES,
Secretary.

H. C. A. Bingley, Esq.,
General Council of the Bar,
2, Hare Court, Temple, E.C.

2, Hare Court, Temple, E.C.,
May 12th, 1910.

DEAR BARNES,

I BROUGHT your letter of the 12th April to the notice of the General Council of the Bar, and in reply I am desired to say as follows:—The statement in the council's report to which you refer was founded upon what is common knowledge in the profession as to the condition of things existing in many of the county courts, fortified by the information supplied to the council by those of its members who have practised, or are practising, in county courts.

The council are not aware of any statistics bearing on the subject.

With a view of affording assistance to the Commission the council have approached several members of the Bar, known to the council as gentlemen of weight and experience in this class of work, and as having particular and personal knowledge of the conditions prevailing in the county courts. The council have invited them to mention some of their individual experiences.

The council think it right to transmit to the Commission without comment all such statements, in the order, and in the precise form, in which they have been received.

The council have good reason to believe that these statements could, if necessary, be largely supplemented.

Yours very truly,
HENRY C. A. BINGLEY,
Secretary.

Hon. H. Gorell Barnes, Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.

STATEMENTS REFERRED TO IN THE ABOVE LETTER.

I. HAMPSHIRE COUNTY COURT (ISLE OF WIGHT).

A King's Counsel mentions a case of wrongful dismissal in which he was engaged, which lasted the whole of the following five days, and in which counsel on both sides were obliged to go down from London on each occasion:

1st December 1909.
11th „ 1909.
7th January 1910.
10th „ 1910.
15th „ 1910.

This case appears illustrative of the time occupied nowadays by individual cases in the county court, of the want of continuity of trial, and of the consequent inconvenience and expense incurred.

II. BARRISTER "A" supplies the following statement:—

(1) At Watford, October 1908, I went down, arrived there at 10.40 a.m. There were present five other counsel besides myself. We were all summoned for 10 o'clock. There were 200 judgment summonses, which lasted from 11 a.m. till about 3 p.m. My case was called on at 5 p.m. (the other counsels' cases being adjourned), and at 6.30 p.m. was adjourned for a fortnight. The other cases were adjourned, I think, for one month. I know that all the heavy cases except mine were adjourned unheard, and mine was part heard.

(2) I have several times had cases adjourned for at least six weeks at Clerkenwell.

(3) At Hayward's Heath I had a jury case on November 25th, I think, 1907. It began at 3.30 p.m., adjourned at 5 p.m. till January 25th, all the jurors of course being in the neighbourhood of the dispute.

(4) I went to Llanrwst (1908) at great expense to my client, arrived at 10.30, and was immediately told my case could not be taken, and it was adjourned for one month, when I could not go, and my client had to pay another counsel.

(5) Clerkenwell, April 28th, 1910. Registrar requested self and witnesses to be at the court at 10.30. Five ladies (witnesses) came up from the country.

I got to the court at 10.30 and was then told that there were two adjourned cases, one a running down case, with a jury, which would probably last all day. All the day's cases were adjourned till 2 p.m. on the spot. At 2 p.m. we all reassembled and all the cases (the whole day's list) were then adjourned for some indefinite period.

III. BARRISTER "B" supplies the following statement:—

1908, October, November, December: County Court of Surrey:—

In case by wife to recover arrears of allowance under separation deed—defence raised breach of *dum casta* clause.

Four visits of counsel and solicitor and witnesses necessary before the action could be heard owing to congested state of list, viz.:—

October 17th—Guildford.
November 17th—Godalming.
December 7th—Guildford.
December 18th—Guildford. (Case heard.)

October (about 14th):—

(a) Action (about fifteen witnesses—all poor people).
For hearing at Newbury County Court.
Not reached (majority of witnesses came six or eight miles by road).

(b) Adjourned to November court.
In November, it being ascertained that case could not possibly be reached at November court, application made to judge (at another court) to adjourn it to December court, and granted.

(c) December court: action heard and concluded.
N.B.—Action concerned a small estate of a deceased farmer, most of which was spent in costs.

IV. BARRISTER "C" supplies the following statement :—

Date.	Name of Case.	County Court.	Remarks.
1908. June 3rd - -	Dyke *v.* Stabb Johnson -	Bromley C. C. -	Judge sat till nearly midnight to finish an ordinary case of personal injuries.
1908. September 9th, adjourned to October 24th.	Kettle *v.* Mustard - -	Ipswich C. C. -	Counsel, solicitor, &c. had to go down twice. Hence much increased expense.
1909. April 5th, adjourned to April 30th.	Elliott *v.* Gt. E.L.M.O. Company.	Shoreditch C. C. -	Negligence.
1909. July 21st, adjourned to November 5th.	Mawby *v.* Mawby - -	Westminster C. C.	Wrongful dismissal and a/c.
1909. July 28th, adjourned to December 9th.	Lindsey *v.* Perfect Mantle Company.	Shoreditch C. C. -	Goods sold and d/d.
1909. October 20th, adjourned to November 18th.	Corderoy *v.* Carter Patterson.	Clerkenwell C. C. -	Personal injuries.
1909. November 24th, adjourned 1910, January 13th.	McIntyre *v.* Metropolitan Building Company.	City of London Court.	
1909. December 3rd, adjourned to December 18th.	Weston *v.* Dunkley -	Wandsworth C. C.	Workmen's compensation case.
1910. February 14th, adjourned to March 15th.	Stanway *v.* Edmondson, Limited.	Barnet C. C. -	Workmen's compensation case.
1910. March 4th, adjourned to April 22nd.	Betgemann *v.* L.G.O. Company.	Westminster C. C.	Personal injuries.
1910. March 31st, adjourned to May 22nd.	Parkinson *v.* G.E. Rly. -	Mildenhall C. C. -	Counsel, solicitor, and witnesses from London will have to go down twice. 31st March case part heard and adjourned for want of time to 22nd May.

NOTE.—I could, if necessary, increase this list very considerably. These cases are taken at random in five minutes. No one with any considerable practice in the county courts could dispute their congested state, though nearly all judges sit till at the earliest 5 p.m., and many of them sit much later.

V. BARRISTER "D" supplies the following statement :—

As regards heavy cases in the county court on November —, 1906, December 8th, 1906, and January 31st, 1907 ; I was at Nottingham in a case lasting all the above three days, by name Bingham Urban District Council *v.* Snaith Plaster Company.

At Brentford last year I was in the case of Chiswick U.D.C. *ats.* Davidson, which was tried on January 29th, February 12th, February 19th, and retried April 15th, April 28th, until 10.15 at night, and a motion for a new trial heard on May 8th, 1909.

As regards adjournments :—

Westminster: Walton, Hassall, and Port *v.* L.G.O. Company :—
July 21st, 1909, adjourned to October 25th, 1909.

Westminster: Parsons *v.* Thornton Smith :—
November —, 1909, adjourned.
February 4th, 1910, adjourned.
March 14th, 1910, heard.

Lambeth: Alderman *v.* Hyams :—
Adjourned first prior to January 1910.
January 25th, 1910, adjourned.
March 3rd, 1910, tried.

Croydon: Bruce *v.* Fox and Lyon :—
March 15th, 1910, adjourned.
April 21st, 1910, heard.

City of London Court: Trew *v.* Williamson :—
January 6th, 1910, adjourned.
February 24th, 1910, heard.

City of London Court: Society of Laundry Engineers *v.* Steinberg :—
April 9th, 1910, adjourned indefinitely.

VI. BARRISTER "E" makes the following statement :—

You have asked me to give you any information I can as to the desirability or otherwise of conferring divorce jurisdiction upon the county courts, having regard to the state of business already existing in them.

My experience is practically limited to the London courts, and I cannot speak with any certainty regarding those in the country.

So far as the London courts are concerned, I say without hesitation that each of them has as much business already as can be dealt with satisfactorily.

To give divorce jurisdiction would seriously interfere with their present usefulness; moreover, the length of time required by most divorce cases would necessitate their being adjourned part heard. This would be very inconvenient in those of the courts which do not sit from day to day, and would mean bringing jurors and others back after some days' interval.

VII. BARRISTER "F" supplies the following statement :—

Chelmsford: *Re* D. :—
July 11th, 1905 (part heard and adjourned).
September 15th, 1905 (part heard and adjourned).
October 28th, 1905 (hearing concluded).

Grays Thurrock: P. *v.* U. :—
July 11th, 1906 (not reached).
October 10th, 1906 (not reached).
November 7th, 1906 (2—5.30 p.m.).

R. *v.* G. (jury case) :—
October 10th, 1906 (2—6), adjourned.
November 7th, 1906 (11—1.30 p.m.).

Clerkenwell: C. *v.* M. :—
November 28th, 1908 (not reached).
January 17th, 1909 (not reached).
March 6th, 1909
April 9th, 1909
April 30th, 1909
May 7th, 1909
} Hearings.

VIII. BARRISTER "G" supplies the following statement :—

Vergette *v.* Ormond :—This was an action in the high court remitted for trial in the court of Waltham Abbey about 12 miles from London. The plaintiff, his solicitor, and witnesses lived about 80 miles from London, near Peterborough. The defendant and most of his witnesses lived near Waltham Abbey, some of them came from near Peterborough.

On February 5th, 1909, the day fixed for the hearing, the parties, with their counsel, solicitors, and witnesses (of whom there were eight or nine each side), attended at Waltham Abbey. About 3 p.m. or 4 p.m. it became obvious there was no possibility of the case being reached, and on application to the judge he kindly granted a special day for the hearing in London.

According on February 22nd the hearing began in London, and when the judge rose about 4 p.m. was rather more than half-way through. The judge again kindly gave a second special day for this case, and for another from one of his courts.

On March 9th the hearing was resumed in London and concluded, this being the third occasion on which plaintiff (who was defendant on the issue), his solicitor, and witnesses (except one whose evidence was taken on February 22nd) had come from Peterborough. Judgment was reserved, and on April 1st was delivered in London.

N.B.—All this time the horse, whose sale on warranty gave rise to the action, was standing at livery at Peterborough.

The judge was His Honour Judge Tindal Atkinson, and the court was Waltham Abbey.

IX. BARRISTERS "H" and "H¹" give the following instances:—

Edmonton County Court: Oldfield Advertising Co. *v.* Hawkins Interpleader Hester (claimant):—

January 31st, 1910, for hearing, adjourned to February 4th at 10.15.
Adjourned to March 4th } for judge's health.
Adjourned to March 7th }
Adjourned hearing to April 19th, at Middle Temple Library.

Westminster County Court: Rainbird *v.* L.G.O. Company and Humbers, Limited:—

Hearing for December 8th, 1909.
Adjourned to February 14th, 1910.
Adjourned to March 21st, 1910.

X. BARRISTER "I" supplies the following statement:—

(1) Banbury County Court: Doe *v.* Fox:—

This is one of the worst examples I know. It was a simple case of detinue, with a difficult but short point on the measure of damages. The facts occurred in March 1908.

1st day of trial, 29th May 1908. Began about 2.30, adjourned part heard about 4.45.
Adjourned hearing, 18th December 1908. (It was adjourned against the wishes of the parties till October 1908, and subsequently for the convenience of one side till December.)
Appeal heard by Div. Court, 13th May 1909. Ordered to be tried in London by Judge Bray at Clerkenwell County Court.
New trial first hearing, 7th July 1909. Part heard.
New trial adjourned hearing 28th July 1909. Judgment ultimately given (I think October 1909) for 18*l.*

(2) Newbury County Court: Jones *v.* Horne. Question of water rights at a mill:—

Facts occurred April 1908.
1st day, 21st October 1908. Began late; adjourned part heard.
2nd day, 18th November 1908. Began late again; adjourned part heard.
3rd day, 9th December 1908. Lasted most of day; adjourned part heard.
4th day, 9th January 1909. Finished at judge's private house.
Judgment, 10th March 1909.

(3) Newbury County Court: Jewell *v.* Jewell:—

Adjourned for want of time being after Jones *v.* Horne, 21st October 1908.
Adjourned for want of time being after Jones *v.* Horne, 18th November 1908.
Adjourned for want of time being after Jones *v.* Horne, 9th December 1908.
Adjourned hearing, 20th January 1909.
Judgment, 10th March 1909.

(4) Oxford County Court: Coppock *v.* Cooper. Dilapidations:—

1st day not reached, 10th August 1906.
Referred to arbitration by consent, part heard, 29th October 1906.
1st day of arbitration, 21st November 1906.
2nd day of arbitration, 28th November 1906.
3rd day of arbitration, 29th November 1906.
4th day of arbitration, 6th December 1906.

(5) Banbury County Court: Coleman *v.* Miles. Right of way:—

1st day, 15th October 1909. Part heard (began late).
2nd day, 14th November 1909. Part heard (began late).
3rd day, 18th December 1909. Took nearly all day.
4th day, 10th March 1910. Judgment reserved.
Not yet given: 2nd May 1910.

(6) Reading County Court: Tantard *v.* White. Building dispute (jury):—

1st day, 16th January 1908.
2nd day, 23rd January 1908.
3rd day, 28th January 1908.
Judge appointed two special days to hear it out. Lasted most of each day.

(7) Southend County Court: Rees *v.* Gurney:—

Case opened, 8th January 1908.
Adjourned hearing, 15th March 1908.
Final hearing, 22nd March 1908 (in London; Judgment reserved).

XI. BARRISTER "J" supplies the following statement:—

I have had considerable experience in the county courts, both in the metropolis and in the country.

My county court practice at the present time consists of substantial actions. In metropolitan county court cases my invariable practice is when my clients have the conduct of the action to advise them to communicate with the registrar before the return day and to inform him that in my opinion the case will take two or three hours, as the case may be, and that to avoid expense the case should be adjourned to an open day when it is likely to come on. The consent of the other side is obtained, and in nine cases out of ten the action stands adjourned from the first return day.

This is invariably my experience at Brentford and Westminster. The other day an adjourned jury came on at Brentford at 3 p.m., and the jury returned their verdict with judge still doing other work after six.

It is a matter of common knowledge that the courts are congested. The increased jurisdiction has added enormously to the work. Small cases stand adjourned at great cost.

It is impossible to get any record of cases settled at a sacrifice rather than incur expense of adjournments. Moreover, many judges sit to late hours to finish their work, *e.g.*, Judges Bacon (Bloomsbury, Whitechapel), Smyly (Bow and Shoreditch), Tindal Atkinson.

To-day (28th April, 1910) at Clerkenwell an ordinary action for damages third in the list after jury action stands adjourned generally for want of time, and may come on in June. An action, 8th April, 1910, City of London Court, before Lumley Smith goes over for want of time until June.

When before Judge Tindal Atkinson at Colchester (the judge sits two days running), my case fixed for the first day came on the next day. A case at Southend was dealt with as I have suggested. It was adjourned before the return day so as to be heard.

The pint pot of the metropolitan courts is overflowing with the quart of increased jurisdiction, and it is impossible to expect that it can absorb the gallon of divorce.

A substantial defended divorce with a jury or without would throw the courts out of gear for months. On the score of expense only a divorce case must be tried *de die in diem*, moreover, the nature of the action renders this course highly desirable.

Now with regard to provincial courts, these are to be divided into:—

(*a*) Those in big industrial centres.
(*b*) Those in rural and small provincial towns.

As to (*a*), my experience is as in London, and I would only observe the good judges make work.

A county court is a small cause court and a judge who commands confidence makes work. In other words, the better the tribunal the less time there is for any additional work.

As to (*b*), the same observation applies although in a lesser degree because the work is not so heavy. But the courts are more numerous, and the difficulty of

completing the circuit and trying a defended divorce *de die in diem* would be practically insurmountable. My experience of heavy cases (*e.g.*, a right of way at Huntingdon) is that one is practically forced to a settlement. Part of a day is no use for substantial cases. It would be cheaper to try at assizes. Moreover, one cannot help criticising the personnel of the provincial bench, and one shudders to think of the effect of the administration of the law, often remarkable in civil actions, when administered by the same tribunal in a contract which, whether regarded as sacred or civil, affects "status" and goes to the bedrock of society. Of course one sees how the law is administered on appeal in the divisional court.

There is a further point to be considered, and one that is applicable to all county courts, and more especially to country county courts. In divorce work there is an amount of practice and work before the registrars of the Divorce Court, both before and after decree, which has not its parallel in ordinary actions. My own experience of interlocutory work in civil actions before county court registrars is not such as to give one confidence as to their ability to deal with such work as divorce. They have neither the training nor experience. And in the country the leading solicitor with the largest family practice is the registrar.

I append a cutting from the "St. James and Evening Standard," Saturday, April 30th, 1910, which confirms my view as to congestion. I may mention that when the question of appointing Judge Bray was under consideration, and Judge Edge was speaking of the overwork of the courts, I spoke to Judge Bacon, who then said he could get through his work. I told him I supported Judge Edge's views and considered late hours unfair to litigants. I have spoken to Judge Edge on the subject of divorce in metropolitan courts, and he holds my view and has allowed me to say so.

"A Battle of Litigation.

"'Workmen's compensation is causing a battle
" of litigation,' Judge Bacon declared at the
" Whitechapel County Court. 'The Legislature
" 'never intended that this should be the case,
" 'and I shall have to make representation to the
" 'effect that my ordinary work is so considerable
" 'that I cannot undertake these cases.'"

XII. BARRISTER "K" supplies the following statement:—

Clerkenwell County Court (H.H. Judge Edge.): Grimshaw, Baxter, & Co. *v.* Parker:—

Plaint:—
June 1909.

Hearing:—
July 16th, 1909. Part heard and adjourned.
September 29th, 1909. Part heard and adjourned.
November 2nd, 1909. Part heard and adjourned.
December 9th, 1909. Part heard and adjourned.
December 10th, 1909. Part heard and adjourned.
January 6th, 1910. Part heard and adjourned.
January 7th, 1910. Part heard and adjourned.
February 1st, 1910. Part heard and adjourned.
February 4th, 1910. Part heard and adjourned.
February 18th, 1910. Part heard and adjourned.
March 14th, 1910. Part heard and adjourned.
April 15th, 1910. Judgment.
Notice of appeal served 29th April.

The learned county court judge when delivering judgment in this case remarked as follows:—

" The hearing of the evidence and the speeches
" of counsel occupied eleven full days, in addition
" to the time in which he had been engaged in
" looking up and considering the cases cited by
" the respective counsel on points of law. He
" mentioned that in order to say that the time
" taken up could and would have been very
" materially shortened if it had been possible to
" proceed with the hearing *de die in diem*, but as
" in that court the lists were usually filled up
" from a month to six weeks in advance, the
" adjournments had to be for long intervals,
" necessitating not only the reading of the
" evidence previously given, but often causing
" the duplication of evidence which was not in
" dispute, but which both the court and counsel
" had overlooked or could not find without much
" search through voluminous notes."

Romford and Ilford County Court (H.H. Judge Tindal Atkinson):—

Plaint:—
January 1910.

Hearing:—
8th February (Romford). Part heard.
21st April (Temple). Part heard.
22nd April (Temple). Part heard.
3rd May (Ilford).

XIII. BARRISTER "L" supplies the following statement:—

Hants County Court (H.H. Judge Gye), Ryde and Newport, I.W.: Grimsdick *v.* Sweetman:—
July 1908. Case not reached.
August 1909. Case heard c.a.v.
September 1908. c.a.v.
October 1908. c.a.v.
November 1908. Re-argued c.a.v.
December 1908. c.a.v.
January 1909. Judgment for defendant.
July 1909. Judgment reversed on appeal.

Surrey County Court (H.H. Judge Harington), Guildford and Godalming: Colwell *v.* Churchill:—
October 1909. Case not reached.
November 1909. Part heard and adjourned.
December 1909. Not reached.
January 1910. Not reached.
March 1910. Concluded and judgment.

Appeal entered—abandoned owing to bankruptcy of successful defendant.

XIV. BARRISTER "M" supplies the following statement:—

Since June last year I have only twice been briefed in the City of London Court. Details follow:—

(1) Frankau *v.* Allsopp (non-jury).
1909, 5th July. Case not reached for want of time; adjourned to the last week in September.
1909, 30th September. Case part heard (about 3½ hours occupied).
1909, 15th November. Case part heard (full day occupied).
1910, 21st February. Case part heard (full day occupied).
Further hearing fixed for May 4th; another full day will be occupied.

(2) Steinberger *v.* Wylde (jury).
1910, March 14th. Not reached for want of time; adjourned to 26th April, before which the case was settled.

The above cases showed me that where a case is not reached for want of time, or is adjourned part heard, the state of business at the court is such, that the normal period which must elapse before the case can be in the list again is from six weeks to two months. One of the above cases, as will be seen, has turned out to be a four-day case, and I have a leader in it.

I should like to add that on more than one occasion —in all for 20 days—I have sat as deputy for His Honour Judge Philbrick, on County Court Circuit, No. 55 (Dorset, &c.), where I have twice taken all his more important courts, as well as many of the smaller ones. Judging from that experience I am strongly of opinion that, although in the smaller courts, where divorce cases would very rarely crop up, there would be ample time to deal with them, yet in the larger centres (*e.g.*, Bournemouth, Poole, Weymouth, and Salisbury) where they might be anticipated, there would not be time to deal with them. Judge Philbrick has given me permission to state the impressions I have formed from my experience as his deputy.

XV. BARRISTER "N" supplies the following statement:—

My experience has been that the county courts are frequently blocked with cases which they are unable to dispose of as and when they come into the list, or within a reasonable time thereafter.

Without going into detail let me give you as illustrations the fortunes of four cases I recently had in the Guildford and Godalming County Courts:—

(1) Law *v.* Abram. This was a heavy case for a county court involving title to land, and the attendance of very numerous aged witnesses and eminent surveyors from London. It was in the list of the county court:

22nd October 1909.
2nd December 1909.
10th December 1909.
28th January 1910.

Wills *v.* Austin (a workmen's compensation case):
In the list 22nd October 1909.
19th November 1909.
10th December 1909.
28th January 1910.

Trist *v.* Andrews (a case needing speedy trial as it prevented a receiver realising):
In the list 22nd October 1909.
19th November 1909.
22nd December 1909.

Coleville *v.* Churchill (a remitted action):
In the list 19th November 1909.
10th December 1909.
28th January 1910.

The amount of expense, inconvenience, and annoyance all this caused I need not point out.

XVI. BARRISTER "O" supplies the following statement:—

Edmonton County Court: Hayes *v.* Holmes:—
This action was fixed for April 1st, 1909, was adjourned for want of time till May 6th.

Kingston County Court: Van Praagh *v.* Penny:—
This case was fixed for October 8th, 1909, and adjourned for want of time on three occasions: October 23rd, November 3rd, and November 6th.

Westminster County Court: Gross *v.* Ward:—
Fixed for April 21st, 1909, adjourned for want of time till April 28th, when case part heard and two short afternoon appointments given before judgment given.

Wandsworth County Court: Cato *v.* Richards:—
Action fixed for April 16th, 1910, adjourned for want of time till May 3rd.

The above are a few instances of delay in the hearing of cases in county courts.

XVII. BARRISTER "P" supplies the following statement:—

For my own part, I have been very little to county courts of recent years, so that my recent experience is not of much value. I have, however, had a list of cases got out for the year 1907, 1908, and 1909, and three months of 1910. I find I have held 72 county court briefs during those years, and that 12 cases were adjourned for want of time. I am assured by my clerk that in every instance the adjournment was for want of time, and I believe this to be correct. This would mean one case in six adjourned for want of time. This roughly accords with my general recollection.

One of the curious facts to be borne in mind is that the painstaking careful judge, who tries cases thoroughly out, and takes more time over his cases than a less painstaking judge—his courts are therefore more likely to be unable to get through their cases than those of less painstaking judges. Other things, therefore, being equal, the more careful and painstaking a judge is the less time he has to undertake new business. Some judges who have plenty of time to try divorce cases, or any other cases, may possibly have that time because they may despatch their work hurriedly. An able, learned, painstaking, and courteous judge soon gains the confidence of suitors and solicitors, and work flows into his court which otherwise might be arbitrated or settled, or go to the assizes. I know a judge of this description—I abstain from mentioning his name—who is so highly regarded that people in his district would rather try before him than go to the assizes or arbitration. What is the result? His courts are choked with work although he sits pretty nearly every day in the week. Adjournments for want of time are frequent at his principal courts. If he were as bad a judge as he is a good one he would have plenty of time to try divorce cases. As it is, any serious increase of his business would produce complete congestion in his courts.

I am informed that the particular judge I refer to is understood to favour the conferring of jurisdiction in divorce on county courts.

I may say that before Judge Howland Roberts' time Brentford County Court was so choked with work that cases had to be adjourned as a matter of course court after court. No case had a chance to be tried at the court for which it was entered. In those days so notorious was this that I never accepted a brief for Brentford without first ascertaining how many times it had already been adjourned and whether it was certain to come on.

I may say with reference to my figures for 1907, 1908, and 1909, I have never accepted a brief for a county court without doing all I could to make sure that the case would really be heard and not adjourned for want of time. If I thought it at all likely that I might not be reached I have not accepted the brief.

XVIII. BARRISTER "Q" supplies the following statement:—

Clerkenwell is the chief offender. I had two cases there last year in which there were many adjournments.

F. *v.* McC.:
12th January 1909. Adjourned for want of time to try it.
29th January. Began late, part heard.
19th February. Part heard, referred to registrar.
26th March. } Hearing before registrar.
5th April. }
18th June. Argument on registrar's findings.

P. *v.* W.:
1909, 24th September. Adjourned for want of time to try it.
1909, 15th October. Part heard.
1909, 25th October. Hearing concluded.
1909, 13th December. Argument as to costs.

In neither case were the parties people of means, except the defendant in the latter case, and they could ill afford the expense of the adjournments and prolonged litigation.

Southampton County Court:—

U. C. L. *v.* P. Workmen's compensation case. 1st January 1910, hearing began at two o'clock and lasted until six, when it was ajourned as the judge had to get back to Winchester. 11th February 1910, adjourned hearing concluded. This adjournment entailed the usual expense of counsel, solicitors, and some witnesses attending twice over.

Epsom County Court:—

I had a light and air case in this court last year. It began about 2.30, and the hearing was adjourned at 5.30, all the evidence was concluded, and the judge gave a special appointment at his house to hear the speeches of counsel. Recently I have been in a case at Lewes County Court about a dispute of 70*l.* which has occasioned seven days hearings. As the case has been tried before the registrar, it has not occasioned any delay to other litigants, but it is a type of the kind of case which is not now infrequent in county courts.

XIX. BARRISTER "R" supplies the following statement:—

1. Cullen *v.* Aldridge. Suffolk County Court:—
25th April, 1908. The case was down for hearing, but was not reached for want of time. The place of hearing was Framlingham.
19th May, 1908. The case was heard at Saxmundham. If the case had been taken in due course at Framlingham, it would not have been reached until the middle of June.

N.B.—The county court judge did not sit until twelve, otherwise I think the case might well have been heard on the first occasion.

2. Doe *v.* Fox. Banbury County Court:—
29th May, 1908. Case commenced and adjourned part heard.
18th December, 1908. Further hearing.

3. Taylor *v.* Rowhedge Iron Works Co. Colchester County Court:—
13th June 1908. Case commenced and part heard.
22nd July 1908. Case continued and part heard.
28th October 1908. Case continued and part heard.
29th October 1908. Case continued and part heard.
1st December 1908. Case concluded.

4. Sage *v.* Crown Metal Syndicate. City of London Court:—
19th November 1909. Case commenced and part heard.
14th March 1910. Case concluded—it had to be practically re-heard.

N.B.—The intervention of the General Election partly accounts for the delay.

5. Fenna *v.* Pryke. Colchester County Court.
21st October 1909. Case commenced.
24th November 1909. Case concluded.

In many cases, *e.g.*, 3 and 5, the delays were due to the fact that the court did not sit at the place of trial during the interval.

XX. Barrister "S" supplies the following statement:—

Case in the county court of Essex at Southend. This case began on January 2nd, 1909, and necessarily occupied four days owing to evidence of the experts. Owing to the judge giving special sittings for the adjourned hearing no inconvenience was caused to any of the ordinary suitors.

Case in the Southend County Court for breach of contract for the supply of a motor engine. This case took two days, February 14th and 15th, 1910, to try, and ended about 7.45 p.m. on the second day.

XXI. Barrister "T" supplies the following statement:—

In 1908 I appeared with a leader in the Hampshire County Court for the plaintiff in Haywood Slade *v.* Fullerton. The claim was for repairing a motor car, and there was a counter-claim for bad workmanship. The case was heard at Basingstoke on four days, viz., 2nd March (three parts of this day), 7th, 14th, and 21st March (these being special days, the whole of which were devoted to the case). I estimate that in the high court the case would have taken at most a short day at about one-third of the costs incurred in the county court.

A case, of which I understand you have some particulars, Gilbert *v.* Shutler, was recently tried at the Isle of Wight, and took five days. Plaintiff's counsel did not appear on the first day, which was an ordinary court day, but the other four were special days, viz., the 11th December, 1909, 7th, 10th, and 15th January 1910. I estimate that in the high court this case could easily have been finished at the outside in a day and a half. I would add that on appeal the judges stated that injustice had undoubtedly been done by the decision appealed from which they were unable to remedy, because there was no appeal on decisions of fact if there were the slightest evidence to support the finding.

I don't think this result is a solitary instance of injustice arising from this state of the law.

The majority of county court cases in which counsel are engaged are adjourned part heard at least once, and not infrequently twice. My experience is the country rather than London county courts. The result of this is that refreshers necessarily largely come almost entirely out of one's client's pocket in any event, rendering litigation in the county court in any but the simplest and shortest cases as expensive if not more so than in the high court.

XXII. Barrister "U" supplies the following statement:—

My experience unquestionably is that there is serious congestion of business in the county courts, and a few years ago I could have mentioned a good many specific instances of difficulty and delay in getting cases tried in consequence. I have, however, not been very much to county courts of late, and therefore I am afraid my information must be more general than particular.

When I attended county courts more often, I have over and over again either sat all day and failed to be reached, or on information from the registrar as to the state of the list, have adjourned my case on getting to the court by agreement with my opponent. Frequently then adjournments have, on the registrar's advice, been for considerable periods.

Amongst the courts at which I well remember this kind of thing happening are Westminster, Brompton, Clerkenwell, Edmonton, Wandsworth, and Southwark; and the main cause of delay, more often than not, was a huge batch of judgment summonses, preventing the trial of actions beginning before the middle of the day or past.

As recently as last February my clerk accepted a brief for the Wandsworth court on information that it was expected to be taken quite early. I got there at 10.30 by request, only to find that the case was not reached until after 3. It was left part heard, and finally dealt with several weeks later.

No doubt you want facts rather than "views," but perhaps I may say that as far as my experience goes, any substantial addition to the work of county courts would render it impossible for them to properly get through their ordinary work. Either that work would have to stand aside, or the parties and witnesses in matrimonial cases would be kept waiting for hours, and often have to come to the court several times.

XXIII. Barrister "V" supplies the following statement:—

My clerk has been investigating my diaries from 1905 to date, and taken out the county court cases for that period. As far as I can ascertain out of 11 cases (including Mayor's Court cases), 9 were adjourned either before the day because there was no chance of their being reached or on the day because they were in fact not reached. Two were reached so late that they were part heard, and went over one for four days and the other for over three months. The latter has a good history from the point of view of economy. It was heard at the Westminster County Court, and was part heard on the 25th July. It was adjourned on the 26th July until the 5th November, when it was not reached, and was adjourned until the 9th. Speaking quite generally, and from memory, as my diaries before 1905 have been destroyed, my experience has been that more often than not, cases with counsel are adjourned if there is any substance in them. The time when you will be reached in a county court is always a matter of speculation, because there are no sufficient pleadings to guide the tribunal, and the most simple looking cases not infrequently turn out unexpectedly lengthy. Further, there are a large number of cases with litigants in person, and these take up a great deal of time. I have been in county courts until 7.30 p.m. If the county courts are to have divorce jurisdiction the congestion in the metropolitan courts will be greatly increased, and if these cases are to be tried by juries there is the additional objection that you will get on the whole a very bad class of jury, and necessarily a very varying jury, *e.g.*, in Shoreditch and Whitechapel, and such like courts, you would get as bad a jury as you could find, whilst in Westminster and Marylebone you might get a good one. The judges vary almost as much as the juries. In some of the country districts the courts are held at inaccessible places, and at intervals of a month, and an adjournment in such a case would involve very considerable expense. County courts are always supposed to be economical, but that is by no means always the case. I recollect one case in which the claim was for 2*l.* 14*s.* 6*d.* It involved a rather nice point of law as to the rights of advertising agents, and the taxed bill of costs came out at over 30*l.* Another objection to county courts is the very bad accommodation both for counsel and witnesses. The serious feature of an adjournment in a county court is that it almost invariably means going over to some more or less distant date, because the lists are arranged for each day weeks beforehand, and the unhappy litigant who has his case adjourned has to

take the first open day, which may mean a month or more ahead, and then he has to take the risk of a further adjournment. I believe Judge Bacon always, or nearly always, finishes his list, but then he sits until all hours.

XXIV. BARRISTER "W" supplies the following statement:—

The two following cases have recently occurred in my practice:—

(*a*) Haverhill County Court, Suffolk. Claim for extraordinary traffic about 130*l*., the judge kindly fixing special days. There were two defendants, but it was arranged that the questions of fact should be fought by one defendant on behalf of both, thus saving at least half the time which would have been required had the defendants (as they might well have and in most cases would have) required to be separately represented. The case took three days, 14th February, 1st March, and 5th March 1910, and a fourth day was appointed for hearing arguments on the law when both defendants must have necessarily been separately represented, but the case was settled before the final hearing, which might quite possibly have required a fifth day. A very large number of witnesses were examined, including experts from London, Chelmsford, and Bury St. Edmunds.

(*b*) Carlisle County Court. Appeal from rejection of proof in bankruptcy for 1,400*l*.

First day appointed for hearing, 2nd November 1909.
Case adjourned to 14th January 1910.
Case further adjourned to 3rd February 1910.
" " " 8th March 1910.
" " " 3rd May 1910.

The case was heard and determined on the last-mentioned day. The adjournments were necessitated first by illness of one party and then by his requiring time for discovery and examination of voluminous correspondence, documents, and accounts, and consequent amendment of the points of rejection. The dates given were apparently the earliest available having regard to the sittings and business of the court.

(*c*) A barrister in my chambers had the following case in 1908:—

Colchester County Court. Claim for injunction to restrain a nuisance by noise.

1st hearing, 12th June 1908.
2nd " 22nd July 1908.
3rd " 28th October 1908.
4th " 29th October 1908.
5th " 1st December 1908.

XXV. BARRISTER "X" supplies the following statement:—

1909.	
January 19.	City Court: Corbett *v.* Fracis, S.O. to
February 4	Adjourned for Mr. ——'s convenience to
February 23.	Brief returned.
February 22.	Westminster: Thornton *v.* Giles, S.O. to
March 10.	Adjourned, want of time, to
April 7.	
February 25.	City Court: Ward *v.* Lovell, adjourned to
March 16.	Want of time.
March 29.	City Court: Goodall *v.* Pilley, 10.30 released till 2 o'clock, and finally adjourned to
May 17.	Adjourned again to
May 24.	
May 6.	Westminster: Frister *v.* Gas Co., judgment on
May 21.	
June 9.	Bow: Spencer *v.* Nippon Tusen, case heard, judgment reserved.
November 16.	Westminster: Adamson *v.* Berridge, S.O. to
December 8.	For want of time; case settled meanwhile.
November 26.	Westminster: Rowley *v.* White, S.O. to
November 30.	Want of time, and judgment reserved to
1909.	
December 3.	
December 9.	Westminster: Thornton *v.* Schintz, adjourned to
1910.	
January 18.	At 2 o'clock, brief returned.
February 1.	Bow: Millar *v.* Turnbull, not reached.
February 15.	Attended and disposed of.
February 11.	Westminster: Bevan *v.* Crittall, S.O. want of time.
March 21.	Apparently further adjourned to
May 9.	Brief returned meanwhile.

XXVI. BARRISTER "Y" supplies the following statement:—

1909.	Swain *v.* Connor: Southend County Court:—
April 23.	Adjourned for want of time to
May 13.	Part heard. Adjourned for surveyors to agree figures to
June 11.	Adjourned for want of time to
June 12.	Case finished.
	White *v.* Clare: Southend County Court:—
June 10.	Adjourned for want of time to
July 8.	Adjourned for want of time to
July 9.	Part heard.
July 10.	Case finished at Chelmsford to avoid delay to September.

XXVII. BARRISTER "Z" supplies the following statement:—

My experience in county courts, which are in and about London, is that there is great congestion and considerable delay in consequence. Rarely is a case heard on the original return day, while a case of any magnitude (by which I mean a long case) has to be taken *piecemeal*.

The county court judge's engagements on his circuit preclude him from taking a lengthy case *de die in diem*, *e.g.*, in a fairly recent case in which I was engaged we spent one day without being reached, and five subsequent days were given to the case by way of special sittings prolonged over a period of six weeks. To apply such a system to divorce would be to prolong domestic agony and encourage perjury.

2, Hare Court, Temple, E.C.,
May 31st, 1910.

DEAR BARNES,

Re the Condition of Business in the County Courts.

A PRINTING error (which I much regret) has been pointed out to me in the statement by Barrister "S" appearing on page 12 of the memorandum which is before the Royal Commissioners. In the second paragraph of such statement "Southend" is a misprint for "Southwark."

With reference to the last case referred to on page 3 of such memorandum Barrister "C" now writes to me as follows:—

> "The case at Mildenhall C.C., mentioned in my "list, came on for further hearing on Saturday, "28th inst. (22nd inst. is my error), and was "again adjourned *sine die*, the judge intimating "that the next court would be held in September. "I really doubt whether this was a fair illustration to give of overwork, as the judge did not "enter the court till 12.30 either day, and "adjourned at 4 p.m. Be that as it may, costs "are mounting up far beyond the 50*l*. claimed. "Further, with a local jury such delays usually "tell against a defendant who is a railway company, as in the case in question.
>
> "I hope the council note that the courts which "suffer most from overcrowding are those which "are presided over by competent judges."

Yours very truly,
HENRY C. A. BINGLEY.

4, Paper Buildings,
Inner Temple, E.C.,
May 31st, 1910.

MY DEAR BARNES,

AT a meeting of the Bar Council last evening, I was asked to forward to you for the information of the Commission, the particulars of the hearing of a case before His Honour Judge Tindal Atkinson.

I was on circuit at the time of the sittings of the council just before Whitsuntide, and was unaware that the council were preparing particulars of cases at the request of the Commission, otherwise it would have been included in the list that has already been sent in.

The case, I believe, involved questions of custom of a trade, but it shows how a long case can dislocate the working of a circuit to the detriment of litigants and increase the costs of the hearing.

The work connected with Circuit No. 4 is also in a very congested state. It is a circuit that embraces a large area, comprising no less than four county boroughs besides other large towns.

The county boroughs are, Lancaster, Blackpool, Blackburn, and Preston, of which latter town I am the recorder, and I have been informed by many barristers and other people that the judge has as much work as he can possibly get through.

About 18 months ago there were cases which had been hanging over from 9 to 12 months. This was partially remedied by the temporary appointment of a barrister to hear the cases under the Workmen's Compensation Act, but the population of the district is growing, and it would be impossible for any judge to deal satisfactorily with any larger amount of work.

Yours truly,

FRANK H. MELLOR.

HAYDOCK *v.* THE EASTERN COUNTIES DAIRY CO-OPERATIVE SOCIETY.

1908, November 27th.—Maldon, in Essex. Case in the list but not reached.

1909, January 5th.—Maldon. Case opened at 2 p.m., part heard and adjourned for three weeks.

1909, February 25th.—Chelmsford. Part heard.
" " 26th.—Chelmsford. Part heard and adjourned for two months.

1909, April 29th.—London (R.C.J.). Part heard.
" " " " Part heard and adjourned for two months.

1909, June 28th.—London (R.C.J.). Part heard.
" " " " "

1909, October 11th.—Chelmsford. Judgment.

APPENDIX VIII.

STATISTICS AS TO SITTINGS IN COUNTY COURTS, SUPPLIED BY HIS HONOUR JUDGE TINDAL ATKINSON.

Circuit.	Number of Ordinary Sittings, 1909. Before Judge. 1.	Before Deputy Judge. 2.	Before Registrar when Judge or Deputy Judge not sitting (if any). 3.
1	110	3	10
2	128	0	0
3	123	0	11
4	151	8	3
5	148	0	9
*6	367	0	3
7	116	66	0
8	133	9	0
9	139	0	0
11	160	0	2
12	197	0	0
13	136	0	0
14	208	0	0
15	158	5	12
16	152	0	0
17	152	8	5
18	177	0	2
19	172	4	0
20	157	0	0
†21	201	3	2
22	142	9	9
24	115	18	5
25	164	0	1
26	116	1	0
27	127	13	0
28	120	0	0
29	143	4	1
30	155	0	0
31	126	0	0
32	156	0	0
33	149	8	7
35	144	3	3
36	143	2	7
‡37	188	0	0
‡38	234	7	0
‡40	214	3	0
‡41	208	1	0
‡42	189	3	0
‡43	199	6	0
44	171	18	1
‡45	174	2	29
‡47	176	1	0
48	132	0	1
49	160	5	0
50	167	6	4
51	162	0	0
52	144	2	0
53	155	0	1
54	172	0	0
55	66	88	10
57	121	0	15
58	142	0	0
59	111	0	0
Totals	8,370	306	153
City of London Court	205	9	0

* Circuit No. 6.—Two judges.
† Circuit No. 21.—Two judges at Birmingham.
‡ Circuits Nos. 37, 38, 40, 41, 42, 43, 45, 47.—Judge Bray sits at these Courts as an additional judge 158 days, included in the above return.

APPENDIX IX.

TABLE I.—HERTS COUNTY ASYLUM,

Questions 12,110, 12,111,

HISTORY OF THE PERSONS ADMITTED AS DIRECT ADMISSIONS—FROM THE OPENING OF THE ASYLUM TRANSFERS FROM OTHER ASYLUMS AND

(This Table refers to Persons as distinguished from Cases.

Ages and Civil States at the time of First Admission to Hill End Asylum.	Total Persons Admitted, 1901-09. The First Admission to Hill End Asylum only recorded.		The Number of the Persons Admitted who were *Discharged Recovered* after a residence in Hill End of								The Number of the Persons Admitted who were *Discharged not Recovered* after a residence in Hill End of							
			Under 1 year.		Over 1 and under 5 years.		Over 5 and under 9 years.		Total Persons Recovered.		Under 1 year.		Over 1 and under 5 years.		Over 5 and under 9 years.		Total Discharged not Recovered.	
	Males.	Females.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
Under 15 years:—																		
Single	20	5	–	–	–	–	–	–	–	–	4	3	–	–	–	–	4	3
15 to 19 years:—																		
Single	25	29	6	5	–	3	–	–	6	8	2	1	2	1	1	–	5	2
20 to 24 years:—																		
Single	29	33	11	9	–	–	–	–	11	9	3	1	2	1	–	–	5	2
Married	3	8	3	5	–	–	–	–	3	5	–	1	–	–	–	–	–	1
25 to 34 years:—																		
Single	54	70	19	21	3	2	–	1	22	24	4	3	–	2	–	–	4	5
Married	18	37	9	10	–	3	–	–	9	13	1	6	–	3	–	–	1	9
Widowed	3	2	1	2	–	–	–	–	1	2	1	–	–	–	–	–	1	–
35 to 44 years:—																		
Single	33	33	12	7	–	1	1	–	13	8	1	3	1	1	–	–	2	4
Married	64	64	22	22	1	9	–	–	23	31	4	6	1	1	1	–	6	7
Widowed	2	3	–	1	–	–		–	–	1	1	1	–	–	1	–	2	1
Unknown	4	–	3	–	–	–	–	–	3		1	–	–	–	–	–	1	–
45 to 54 years:—																		
Single	36	33	10	6	–	1	–	–	10	7	2	2	2		–	–	4	2
Married	53	53	18	20	1	2	1	–	20	22	5	1	2	1	1	–	8	2
Widowed	8	13	2	2	–	1	–	–	2	3	–	2	–	4	–	–	–	6
Unknown	2	–	1	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–
55 to 64 years:—																		
Single	14	16	4	3	–	–	–	–	4	3		–	–		–	–	–	–
Married	41	40	12	16	–	3	–	–	12	19	3	1	2	1	–	–	5	2
Widowed	6	16	2	6	–	–	–	–	2	6	–	2	1	–	–	–	1	2
Unknown	2	–	1	–	–	–	–	–	1	–	–	–	–		–	–	–	–
65 to 74 years:—																		
Single	9	6	–	1	–	–	–	–	–	1	1	–	1	–	–	1	2	1
Married	23	21	1	3	–	–	–	–	1	3	1	1	–	1	–	–	1	2
Widowed	16	22	4	2	–	–	–	–	4	2	–	1	–	1	–	–	–	2
75 years and upwards:—																		
Single	1	5	–	–	–	–		–	–	–	–	–	–	1	–	–		1
Married	12	6	1	–	–	–	–	–	1	–		–	–	–	–	–	–	–
Widowed	20	21	–	1	–	–	–	–	–	1	2	1	–	2	–	–	2	3
Totals:—																		
Single	221	230	62	52	3	7	1	1	66	60	17	13	8	6	1	1	26	20
Married	214	229	66	76	2	17	1	–	69	93	14	16	5	7	2	–	21	23
Widowed	55	77	9	14	–	1	–	–	9	15	4	7	1	7	1	–	6	14
Unknown	8	–	5	–	–	–	–	–	5	–	1	–	–			–	1	–
Totals of each sex	498	536	142	142	5	25	2	1	149	168	36	36	14	20	4	1	54	57
GRAND TOTALS	1,034		284		30		3		317		72		34		5		111	

* The figures showing Heredity of Insanity refer only to the Insanity of the Parents

APPENDIX IX.

HILL END, ST. ALBANS.

12,112, 12,131.

FOR DIRECT ADMISSIONS (1901) TO THE END OF 1909—READMISSIONS (DIRECT OR INDIRECT), STATUTORY READMISSIONS ARE NOT INCLUDED.

One Admission only is recorded of each Person.)

The Number of the Persons Admitted who died in Hill End Asylum after a residence of								The Number of the Persons Admitted who neither were discharged or died, but who remained at Hill End Asylum on December 31st, 1909, after a residence of								*Insanity of Parents of the Persons Admitted, showing the Numbers in which											
Under 1 year.		Over 1 and under 5 years.		Over 5 and under 9 years.		Total Persons died.		Under 1 year.		Over 1 and under 5 years.		Over 5 and under 9 years.		Total Persons remaining.		Father had been insane.		Mother had been insane.		Father and Mother had been insane.		Neither Father nor Mother insane.		Total where Histories were obtained.		Histories were not obtained.	
M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
1	–	3	–	–	–	4	–	1		8	1	3	1	12	2	2	–	1	–	1	–	16	5	20	5	–	–
–	2	–	–	1	–	1	2	2	2	6	10	5	5	13	17	1	1	2	7	1	–	18	19	22	27	3	2
–	1	1	4	–	–	1	5	3	1	5	13	4	3	12	17	–	–	5	6	2	–	16	18	23	24	6	9
–	–	–	–	–	–	–	–	–	1	–	1	–	–	–	2	–	1	–	–	–	–	2	6	2	7	1	1
3	3	2	6	–	–	5	9	4	7	8	17	11	8	23	32	3	9	2	8	–	–	33	37	38	54	16	16
4	1	–	–	–	–	4	1	–	4	4	6	–	4	4	14	2	4	–	3	–	–	12	24	14	31	4	6
1	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2	1	2	1	1	1
2	4	1	2	–	–	3	6	6	5	8	4	1	6	15	15	1	3	–	2	–	–	21	23	22	28	11	5
8	3	7	2	1	–	16	5	7	6	8	10	4	5	19	21	2	2	4	1	–	1	44	44	50	48	14	16
–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	1	–	–	–	–	1	–	1	2	2	2	–	1
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–		–	–	–	–	–	–	–	4	–
3	1	3	–	1	1	7	2	5	4	7	14	3	4	15	22	1	1	–	–	–	1	20	18	21	20	15	13
7	4	5	5	1	2	13	11	6	4	4	9	2	5	12	18	3	2	1	1	–	1	35	37	39	41	14	12
2	1	–	–	–	–	2	1	1	–	–	2	3	1	4	3	–	1	2	1		–	5	6	7	8	1	5
1	–	–		–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2	–
5	3	1	2	1	–	7	5	1	1	2	6	–	1	3	8	–	2	1	1	–		4	8	5	11	9	5
8	5	4	4	–	–	12	9	8	1	3	7	1	2	12	10	1	3	3	2	–	–	33	26	37	31	4	9
3	3	–	3	–	–	3	6	–	2	–	–	–	–	–	2	–	1	1		–	–	2	11	3	12	3	4
1	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2	–
3	1	2	–	–	–	5	1	1	1	–	1	1	1	2	3	–	–	1	–	–	–	4	3	5	3	4	3
10	4	4	3	–	–	14	7	3	6	2	2	2	1	7	9	1	–	2	–	–	1	15	16	18	17	5	4
5	6	3	3	–	–	8	9	2	5	2	2	–	2	4	9	–		–	1	–	–	13	12	13	13	3	9
–	2	–	1	–	–	–	3	–	–	1	1	–	–	1	1	–	–	–		–	1	1	2	1	3	–	2
7	5	1		2	–	10	5	1	1	–	–	–	–	1	1	–	–	–	–	–	–	8	2	8	2	4	4
10	7	2	6	–	–	12	13	3	1	3	3	–	–	6	4	–	–	–	–	–	1	15	13	15	14	5	7
17	17	13	15	3	1	33	33	23	21	45	67	28	29	96	117	8	16	12	24	4	2	133	133	157	175	64	55
14	22	21	14	4	2	69	38	25	23	21	35	9	17	55	75	9	12	10	7	–	3	149	155	168	177	46	52
21	17	5	12	–	–	26	29	6	9	5	7	3	3	14	19	–	2	3	2	1	1	38	45	42	50	13	27
2	–	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	8	–
54	56	39	41	7	3	130	100	54	53	71	109	40	49	165	211	17	30	25	33	5	6	320	333	367	402	131	134
140		80		10		230		107		180		89		376		47		58		11		653		769		265	

(as requested in Question 12,131). Grand Parents and others are not included.

TABLE II.—HERTS COUNTY ASYLUM, HILL END, ST. ALBANS.

Questions 12,136, 12,139.

HISTORY OF THE RELAPSES AFTER RECOVERY OF PERSONS ADMITTED AS DIRECT ADMISSIONS—FROM THE OPENING OF THE ASYLUM FOR DIRECT ADMISSIONS (1901) TO THE END OF 1909.

(This Table refers to Persons as distinguished from Cases.)

Ages and Civil States at the Time of First Admission to Hill End Asylum.	Total Persons Admitted, 1901-09. The First Admission to Hill End only recorded.		Total Persons Discharged Recovered, 1901-09. The Result of the First Admission to Hill End only recorded.		The Number of Recovered Persons who *Relapsed* from their First Recovery at Hill End and were Readmitted to Hill End after an Absence from any Asylum of								Subsequent History of Persons Relapsed (as far only as Hill End records show). On December 31st, 1909, there were							
					Under 1 year.		Over 1 year and under 5 years.		Over 5 and under 9 years.		Total Persons Relapsed.		Discharged Recovered.		Discharged not Recovered.		Died in Hill End.		Remaining in Hill End.	
	Male.	Female.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
Under 15 years :—																				
Single	20	5	–	–	–	–	–	–		–	–		–	–			–	–	–	–
15 to 19 years :—																				
Single	25	29	6	8	1	1	–	–			1	1	–	–				–	1	1
20 to 24 years :—																				
Single	29	33	11	9	1	1	1	2	–	1	2	4	–	1	–		1	–	1	3
Married	3	8	3	5		–	–	–	–	–	–	–	–	–				–	–	–
25 to 34 years :—																				
Single	54	70	22	24	–	1	1	3	1	1	2	5	–	–		–		–	2	5
Married	18	37	9	13	1	–	1	–	–	–	2	–	–	–				–	2	–
Widowed	3	2	1	2	–	–	–	–	–	–	–	–	–	–			–	–		–
35 to 44 years :—																				
Single	33	33	13	8	–	1	1	–	–	1	1	2	–	1	–		–	–	1	1
Married	64	64	23	31	–	4		1	–	–		5		3		–				2
Widowed	2	3		1	–		–		–	–	–			–	–	–	–	–	–	
Unknown	4		3		–	–	–	–	–	–	–	–	–	–	–	–		–		–
45 to 54 years :—																				
Single	36	33	10	7	1	1		–	–	1	1	2	1	1	–	1		–	–	–
Married	53	53	20	22	2	3	2	4	–	–	4	7	2	1		1	–	2	2	3
Widowed	8	13	2	3	–		–	–	–	–	–	–	–	–			–	–	–	–
Unknown	2	–	1	–	–	–	–	–	–	–	–	–	–	–		–	–	–		–
55 to 64 years :—																				
Single	14	16	4	3	–	1	1	–			1	1	1	–			–			1
Married	41	40	12	19	–	2	1	2	–	–	1	4	–	2	–		–	1	1	1
Widowed	6	16	2	6	–	–	–	2	–	–	–	2	–			–	–	1	–	1
Unknown	2	–	1	–	–	–					–	–	–				–	–	–	
65 to 74 years :—																				
Single	9	6	–	1	–	–				–	–	–	–		–	–				–
Married	23	21	1	3	1	1	–		–	–	1	1	–	1			1	–		
Widowed	16	22	4	2	–	–	–	–		–	–	–		–		–	–	–	–	
75 years and upwards :—																				
Single	1	5	–	–	–		–	–	–	–		–	–		–			–		–
Married	12	6	1	–	1	–		–	–	–	1	–	–	–			1	–		
Widowed	20	21	–	1	–			–				–	–							
Totals :—																				
Single	221	230	66	60	3	6	4	5	1	4	8	15	2	3		1	1		5	11
Married	214	229	69	93	5	10	4	7		–	9	17	2	7	–	1	2	3	5	6
Widowed	55	77	9	15	–		–	2	–	–		2						1		1
Unknown	8		5		–	–								–						
Totals of each sex	498	536	149	168	8	16	8	14	1	4	17	34	4	10		2	3	4	10	18
GRAND TOTALS	1,034		317		24		22		5		51		14		2		7		28	

APPENDIX X.

INFORMATION SUPPLIED AS REQUESTED IN ANSWER TO QUESTIONS 14,115, 14,177, 14,342–3.

1, Great James Street, Bedford Row.
London, 2nd August 1910.

DEAR SIR,

ENCLOSED I return you proof as requested together with the details of the out-of-pocket expenses in the case of Logan *v.* Logan.

I also enclose the taxed bill of costs in the case of Measures *v.* Measures, the first bill being costs up to setting down and the second being the costs of the trial.

You will see in this, a case which lasted over one day, and the whole of the costs of the respondent amounted to 64*l.* 12*s.* 2*d.*

This was a case from the country, and was contested at every point, with the exception of the question of alimony *pendente lite*, the amount of which was agreed.

Yours truly,
JOSEPH SYKES.

Logan v. *Logan and Stockwell.*

1908.		£	s.	d.
January	Forms, letters, telegrams, &c.	0	10	0
	Affidavit in support of petition	0	1	6
	Filing, &c.	1	17	0
	Notarial fees on affidavit of service	0	10	6
	Affidavits of service and affidavit of search	0	19	6
July 17	Setting down for hearing	3	2	6
	Fare from Pudsey to London	2	0	0
	Counsel's fee on brief	2	4	6
	Fare from Pudsey to London day of trial	2	0	0
	Decree absolute	0	10	2
		£13	14	8

Cash 25*l.*

In the High Court of Justice.
Probate, Divorce, and Admiralty Division.
(Divorce.)

Measures *v.* Measures, Lamberton, and Holland.

Respondent's Costs of Trial.

Michaelmas Sittings.

£	s.	d.		£	s.	d.	£	s.	d.
			Perusing petitioner's notice to inspect and admit				0	6	8
0	13	4	Attending inspecting and bespeaking copy summons				0	13	4
			Paid for copy	0	1	4			
0	1	4	Preparing notice to admit and copy				0	7	6
0	2	6	Service				0	2	6
			Preparing notice to produce				0	7	6
0	2	6	Service				0	2	6
			Instructions for brief, including journey to Wellingborough to take evidence of respondent's parents, and making inquiries as to whereabouts of the servant and shop assistant, and subsequently at Herne Hill, taking her evidence, and also the evidence of respondents, &c.				7	7	0
			Drawing same for, 65				3	5	0
			Fair copy				1	1	8
			Fee to counsel therewith	5	10	0			
			Attending him				0	6	8
			Conference fee	1	6	0			
0	3	4	Attending appointing conference				0	6	8
			Attending conference				0	13	4
			Copy documents to accompany brief petition, folios 7				0	2	10
			,, particulars of petition, folios 3				0	1	0
			,, answer, folios 8				0	2	8
			,, particulars of answer, folios 6				0	2	0
0	0	4	,, reply, folios 5				0	1	8
0	0	3	,, affidavit of documents, folios 9				0	3	0
			,, police court summons, folios 4				0	1	4
			,, documents disclosed, folios 10				0	3	4
1	7	0	,, correspondence, folios 90				1	10	0
0	2	0	,, petitioner's notice to produce				0	2	0
0	0	8	,, respondent's notice to produce				0	2	0
0	3	4	,, petitioner's notice to admit				0	4	0
0	0	8	,, respondent's notice to admit				0	2	0
			Drawing præcipe and subpœna and issuing				0	6	8
			Paid	0	5	0			
0	1	0	Copy for service				0	2	0
0	1	0	Service of same on one witness				0	5	0
			Mileage, Herne Hill, five miles				0	5	0
			Attending searching cause lists				0	13	4
			Notice to respondent to attend court to-morrow				0	3	4
			The like, three witnesses				0	4	6
Dec. 14.			Attending court case in paper, but owing to a misunderstanding petitioner not present, and case stood over to bottom of list, and finally						
2	2	0	sent over to following Thursday. Engaged all day				3	3	0
Dec. 20.			Attending court case, part heard, and adjourned to following day				3	3	0
			Refresher to counsel	3	5	6			
			Attending him				0	6	8
Dec. 21.			Attending court when case finished and order made for decree nisi.						
1	1	0	Costs against both co-respondents. Husband found guilty of cruelty. Decree not to be made absolute until the husband provides a weekly allowance to wife *dum sola*, &c. Custody of child referred to chambers. Wife to have usual order for costs as to decree of adultery. Full costs on question of cruelty				2	2	0

Dec. 21. £ s. d.		£ s. d.	£ s. d.
	Drawing this bill and copies, folios 11		0 11 0
	Attending filing		0 6 8
	Paid	0 2 6	
	Notice of taxing copy and service		0 4 0
0 6 8	Attending taxing		0 13 4
	Attending agreeing amount		0 6 8
1 0 0	Attending registrar with authority for payment out		0 6 8
	Attending at paymaster, lodging same on understanding that costs are paid		0 6 8
	Attending for cheque		0 6 8
	Sittings fee		0 15 0
1 1 0	Letters, &c.		2 2 0
	Paid witnesses:		
	Mrs. Measures, 2 days	1 10 0	
	Fare from Brighton	1 0 0	
0 10 0	*Mr. Buckler* (fitter in employ of Midland Railway Company), 2 days	1 10 0	
0 11 0	Fares from Wellingborough	1 1 2	
0 5 0	*Mrs. Buckler*, 2 days	1 0 0	
0 11 2	Fares from Wellingborough	1 1 2	
0 5 0	*Miss Starmer* (domestic servant), 2 days, and expenses from Herne Hill	1 0 0	
10 15 0		18 12 8	34 10 10
	Disbursements	- -	18 12 8
			53 3 6
	Taxed off	- -	10 15 0
			42 8 6
	Paid taxing	- -	1 2 0
			43 10 6

In the High Court of Justice.
Probate, Divorce, and Admiralty Division.
(Divorce.)

Measures *v.* Measures, Lamberton, and Holland.

Respondent's Costs up to Setting Down.

Trinity Sittings.

1906. May 30. £ s. d.		£ s. d.	£ s. d.
	Instructions to defend		0 6 8
	Attending, retaining Mr. Morle		0 6 8
	Paid his fee and clerk	1 3 6	
	Perusing petition		0 6 8
	Perusing citation		0 1 8
	Attending entering appearance		0 6 8
	Paid	0 2 0	
	Notice of appearance		0 4 0
0 6 8	Instructions for petition for alimony		0 6 8
1 0 0	Drawing same		1 0 0
0 1 4	Engrossing fair copy, folios 4		0 1 4
0 3 4	Attending counsel to settle		0 3 4
1 3 6	Paid his fee and clerk	1 3 6	
June 16. 0 3 6	Writing petitioner's solicitor prior to filing petition, asking what provision petitioner would make with a view of saving this expense of filing petition, &c.		0 3 6
June 21.	Drawing and engrossing summons for particulars of paragraphs 4 and 5 of the petition		0 5 0
	Attending issuing same		0 6 8
	Paid issuing	0 8 0	
	Copy and service		0 3 6
	Attending hearing order made		0 6 8
	Attending obtaining order		0 6 8
	Copy and service		0 3 6
June 30. 0 3 6	On receipt of your letter offering the sum of 10s. per week. Alimony *pendente lite*. Writing my client thereon		0 3 6
0 6 8	Attending respondent and discussing the question of alimony, and I was instructed to ask for 25s. a week seeing that the respondent was maintaining the child		0 6 8
July 3. 0 3 6	Writing Messrs. Nicholson thereon. On receipt of reply that their client could not offer more than 10s. a week		0 3 6
0 6 8	Attending respondent, who finally instructed me to accept the offer rather than delay the proceedings		0 6 8

£ s. d.		£ s. d.	£ s. d.
July 18.	Writing the petitioner's solicitors thereon, and requesting them to pay		
0 3 6	the alimony to respondent's mother, who had the child with her -		0 3 6
0 1 0	On receipt of reply requiring a formal authority for them to pay the mother - - - - - - - - -		
	Drawing authority - - - - - - - -		0 1 0
July 26.	Writing respondent to give me a call and that she was required a formal		
0 3 6	authority - - - - - - - - -		0 3 6
0 6 8	Attending on her calling and signing the authority - - -		0 6 8
July 28.			
0 3 6	Writing petitioner's solicitors, enclosing same - - - -		0 3 6
	All proceedings in alimony - - - - - -		1 10 0
	Perusing petitioner's affidavit as to particulars, 3 folios - - -		0 1 0
	Instructions for answer - - - - - - -		0 6 8
	Drawing same and copy - - - - - - -		1 0 0
	Attending counsel to settle same - - - - -		0 3 4
	Paid his fee and clerk - - - - - - -	1 3 6	
	Instructions for affidavit. Verifying answers - - - -		0 6 8
	Drawing same - - - - - - - -		0 6 8
	Attending respondent to be sworn - - - - -		0 6 8
	Paid oath - - - - - - - -	0 1 6	
	Attending filing answer and affidavit - - - - -		0 6 8
	Paid - - - - - - - - -	0 5 0	
	Copy answer for service, folios 8 - - - - -		0 2 8
	Attending service - - - - - - -		0 3 4
	Summons for discovery - - - - - - -		0 6 8
	Attending issuing - - - - - - - -		0 6 8
	Paid - - - - - - - - -	0 8 0	
	Copy and service - - - - - - -		0 3 0
	Attending summons order made - - - - -		0 6 8
	Attending for order - - - - - - -		0 6 8
	Copy and service - - - - - - -		0 3 6
	Paid for copy, petitioner's affidavit of discovery - - - -	0 3 0	
0 3 8	Perusing same - - - - - - - -		0 6 8
0 0 6	Notice to produce documents, copy and service - - - -		0 4 6
	Attending inspecting documents - - - - -		0 13 4
	Paid for copies of documents - - - - - -	0 3 4	
	Sittings fee - - - - - - - -		0 15 0
	Michaelmas Sittings.		
	Attending, giving further time for reply - - - -		0 6 8
	Perusing reply - - - - - - - -		0 6 8
	Perusing notice cause set down - - - - - -		0 1 0
	Drawing bill of costs and copy, folios 12 - - - -		0 12 0
	Attending filing bill - - - - - - -		0 6 8
	Paid - - - - - - - - -	0 2 6	
	Notice of taxing copy and service - - - - -		0 4 0
	Attending taxing - - - - - - -		0 13 4
	Attending agreeing amount - - - - - -		0 6 8
	Attending fixing amount of future costs - - - -		0 6 8
	Attending for order - - - - - - -		0 6 8
	Paid for same and fixing security - - - - -		0 15 0
	Copy and service - - - - - - -		0 3 6
	Sittings fee - - - - - - - -		0 15 0
5 1 0		5 3 10	20 7 10
	Disbursements - - -	- -	5 3 10
			25 11 8
	Taxed off - - -	-	5 1 0
			20 10 8
	Paid taxing - - -	- -	0 11 0
			21 1 8

APPENDIX XI.

(A.)

EXHIBITS MARKED "D. 1" TO "D. 70," REFERRED TO IN THE EVIDENCE OF MR. HERBERT GREENWOOD WRIGLEY,

being notes of Cases specially investigated by the following Solicitors:—

Mr. Frank Barratt.
,, Gilbert Barratt.
,, Jas. Brooke Garner.
,, Charles Grundy.
,, A. E. Hanson.
,, Harold Scholfield.
,, H. Greenwood Wrigley.
,, Edgar Youatt.

At the Art Museum and University Settlement, Ancoats, Manchester.

D. No. 1.

20th November 1909.

Name.—G. A. A.
Occupation.—Cabinet maker, 30*s.* a week.
Date of marriage.—March 1901. Age when married, 20; wife, 18.
Place where married.—Church of England.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife committed adultery with friend of applicant of 15 years' standing. Applicant discovered offence after a child had been born to this man. Wants custody of his second child. Wife now living in adultery.
Solicitor's observations.—Might be able to raise 10*l.* to 15*l.* to pay for a divorce.
Solicitor's initials.—H. G. W.

D. No. 2.

17th November 1909.

Name.—S. A.
Occupation.—Tram conductor.
Date of marriage.—February 1903. Age when married, 22 years.
Place where married.—Registry Office.
Nature of relief required.—As to liability to support wife. ? Divorce.
Reason for requiring relief.—Applicant's wife emigrated to Canada three years ago (being unsatisfied with applicant's position) under Salvation Army Scheme. Afterwards applied to applicant for support. It is known that she is dressing expensively and living extravagantly, an army officer being responsible for this. Inquiry if made would no doubt reveal grounds for divorce. Wife refuses to return. One child of marriage in custody of applicant.
Solicitor's observations.—Applicant earns 26*s.* per week and has no means for procuring divorce.
Solicitor's initials.—H. G. W.

D No. 3.

10th November 1909.

Name.—H. B.
Occupation.—Fitter, 37*s.* per week.
Date of marriage.—October 1902. Age when married, 19 years.
Place where married.—Registry Office.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife left applicant 10th April. Wife has been living with a man for the last five months at various addresses. Previously, about four years ago, his wife had a child by another man, but applicant forgave her.
Solicitor's observations.—Applicant not called on to support his wife because she can get more out of the other man. Could pay a small sum for divorce, but expense of taking witnesses to London would be too great.
Solicitor's initials.—H. G. W.

D. No. 4.

10th November 1909.

Name.—E. B., wife of P. B.
Occupation.—Rag sorter.
Husband.—Living apart.
Date of marriage.—October 1897. Age when married, 24.
Place where married.—Roman Catholic Church.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Husband deserted her December 26th, 1908, leaving her with one child aged eight years. No proceedings taken. Cannot definitely state if living with anyone else, but believes so. Wages not exceed 10*s.* per week.
Solicitor's observations.—Would avail herself of opportunity for divorce but is penniless. Unless same absolutely free would be unable to avail herself of same.
Solicitor's initials.—C. G.

(MEMO.—In a case like this it would be impracticable to look to husband to reimburse costs.—H. G. W.)

D. No. 5.

17th November 1909.

Name.—L. B., wife of W. E. B.
Occupation of husband.—Labourer.
Husband.—Living apart.
Date of marriage.—May 1892. Age when married, 31.
Place where married.—Church of England.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Desertion by husband nine years ago. Originally allowed 14*s.* per week. Now 5*s.* per week. Now living with another woman. Cannot say as to any children born, but reason to believe so. Never applied for summons, mutually arranged with husband for maintenance to be paid. Applicant has three children, eldest 17 years, youngest 10 years.
Solicitor's observations.—Income under 1*l.* a week.
Solicitor's initials.—J. B. G.

(*See* Memo. on D. 4.)

D. No. 6.

10th November 1909.

Name.—A. B., wife of J. B.
Occupation of husband.—Manager of shop.
Date of marriage.—October 1887. Age when married, 20.
Place where married.—Roman Catholic Church.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Husband not worked for three months. Not really worked since September 1908. Never sober. She earns 7*s.* a week. Family four (21, 16, 14, 12). Children earning 18*s.* 6*d.* a week.
Solicitor's observations.—This is a case where the wife would be much better off if rid of husband, but he has not done anything which entitles her either to separation or divorce. No case for divorce.
Solicitor's initials.—C. G.

(MEMO.—Separation would adequately meet this case.—H. G. W.)

D. No. 7.

10th November 1909.

Name.—E. B., wife of J. B.
Occupation of husband.—Iron turner.
Husband.—Living apart.
Date of marriage.—November 1888. Age when married, 20.
Place where married.—Registry Office.
Nature of relief required.—Divorce.
Reason for requiring relief.—Husband cohabited with woman for the past seven years. Separation order granted in 1892. Husband is over two years in arrear.

Solicitor's observations.—Expense of investigating and taking proceedings in London precludes applicant from moving for divorce.

Solicitor's initials.—H. G. W.

(MEMO.—If applicant were helped to obtain divorce, some part of the costs could be recovered from the husband.—H. G. W.)

D. No. 8.

20th November 1909.

Name.—W. B.

Occupation.—Labourer.

Date of marriage.—December 1906. Age when married, 29; wife, 23.

Place where married.—Registry Office.

Nature of relief required.—Divorce or separation with custody of children.

Reason for requiring relief.—Deserted by wife, who is living with another man.

Solicitor's observations.—Cannot afford the luxury of divorce or separation; hence, cannot obtain custody of his child.

Solicitor's initials.—H. G. W.

(MEMO.—Would it be possible to have a simple order for custody of child in a case like this, without the necessity for proceeding for divorce or separation? —H. G. W.)

D. No. 9.

20th November 1909.

Name.—S. E. C., wife of J. C.

Occupation of applicant.—Laundress.

Husband.—Living apart.

Date of marriage.—November 1907. Age when married, 35.

Place where married.—Registry Office.

Nature of relief required.—Separation and (if possible) divorce.

Reason for requiring relief.—Now living apart from husband owing to his drunken habits. Children by her first husband refused to live with him. Husband very sottish, and no doubt misconducts himself with other women, but as yet no direct evidence.

Solicitor's observations.—No means whatever of taking any proceedings. Earns 5*s.* to 10*s.* per week by washing.

Solicitor's initials.—H. G. W.

D. No. 10.

10th November 1909.

Name.—J. C., wife of H. C.

Occupation of applicant.—Cook, in service (living at home).

Husband.—Living apart.

Date of marriage.—20 years ago. Age when married, 18.

Place where married.—Registry Office.

Nature of relief required.—Wishes to know if can re-marry.

Reason for requiring relief.—Husband went to America, 1903. Corresponded for 12 months, since then no information. Four children, ages 20, 18, 11, and 7. Strictly chaste since husband deserted her.

Solicitor's observations.—This is a case where an amendment of the law is necessary.

Solicitor's initials.—C. G.

D. No. 11.

10th November 1909.

Name.—E. C., wife of C. H. C.

Occupation of applicant.—Dressmaker.

Husband.—Living apart.

Date of marriage.—April 1897. Age when married, 21.

Place where married.—Independent Chapel.

Nature of relief required.—Separation.

Reason for requiring relief.—Husband and wife by mutual agreement agreed to separate, 2nd October 1907. 7*s.* a week. Not paid since April 1908. Reason for separation, another woman; believe still with her, although not living together.

Solicitor's observations.—Wife would like divorce if able to obtain same cheap. Am, however, of opinion that this is a case which would require much further inquiry as wife has only suspicions as to other woman. No direct evidence.

Solicitor's initials.—C. G.

D. No. 12.

22nd November 1909.

Name.—E. C., wife of F. C.

Occupation of husband.—Unknown.

Husband.—Living apart.

Date of marriage.—May 1907. Age when married 20; husband, 23.

Place where married.—Church of England.

Nature of relief required.—Maintenance for child (15 months old).

Reason for requiring relief.—Desertion, coupled with cruelty. ? Adultery.

Solicitor's observations.—Applicant says she can keep herself and only wants support for the child. If she had grounds for divorce would try to obtain same, but has no means of doing so; hence had not tried to get evidence.

Solicitor's initials.—H. G. W.

D. No. 13.

10th November 1909.

Name.—S. C., wife of R. C.

Occupation of applicant.—Cotton operative.

Husband.—Living apart.

Date of marriage.—1878. Age when married, 25; husband, 26.

Nature of relief required.—Divorce.

Reason for requiring relief.—Husband constantly going after other women. Had one child (son). After 17 years of married life husband went to America and has not since been heard of.

Solicitor's observations.—This is a case where, if divorce had been cheaper, the wife might have obtained one, as the husband had previously deserted her and also been guilty of misconduct.

Solicitor's initials.—E. Y.

D. No. 14.

20th November 1909.

Name.—N. D., wife of J. D.

Occupation of husband.—Fitter.

Husband.—Living apart.

Date of marriage.—1898. Age when married, 18.

Place where married.—Registry Office.

Nature of relief required.—Divorce.

Reason for requiring relief.—Husband had two children to another woman after deserting applicant. Only lived five weeks together. One child of marriage.

Solicitor's observations.—Applicant a weaver. Could not afford a divorce. Might be able to raise 10*l.* to 15*l.* if could get cheap divorce.

Solicitor's initials.—H. G. W.

D. No. 15.

13th November 1909.

Name.—E. A. D., wife of J. D.

Occupation of applicant.—Weaver.

Husband.—Living apart.

Date of marriage.—November 1901. Age when married, 20.

Place where married.—Registry Office.

Nature of relief required.—Maintenance order obtained but not complied with.

Reason for requiring relief.—Warrant out for husband's arrest. Deserted wife four years ago and has been living with another woman over two years. Child born to her 2nd May 1908. Applicant has one child born June 1906; order, 7*s.* a week.

Solicitor's observations.—This is clearly a case for divorce, but applicant has no means. There is no evidence of any cruelty.

Solicitor's initials.—C. G.

D. No. 16.

20th November 1909.

Name.—W. D.

Occupation.—Warehouseman.

Date of marriage.—November 1883. Age when married, 25; wife, 26.

Place where married.—Roman Catholic Church.

Reason for requiring relief.—Wife left applicant, and he hears that she is drinking and living as a prostitute. Two children.

Solicitor's observations.—Could find about 15*l.* for divorce if he could get one for that amount.

Solicitor's initials.—H. G. W.

D. No. 17.

13th November 1909.

Name.—M. D., wife of J. H. D.

Occupation of husband.—Warehouseman.

Husband.—Living apart.

Date of marriage.—July 1897. Age when married, 23.

Place where married.—Registry Office.

Nature of relief required.—Maintenance.

Reason for requiring relief.—Husband left England for Australia some years ago and has not heard of him since.

Solicitor's observations.—Husband left for Australia, saying he hoped to improve his position. Since his departure applicant has lost sight of him as he has not communicated with her. (?) Should not such desertion constitute civil decease of the offending party so as to enable the innocent party to re-marry.

Solicitor's initials.—H. G. W.

D. No. 18.

13th November 1909.

Name.—T. D., wife of J. D.

Occupation of husband.—Tailor.

Husband.—Living apart.

Date of marriage.—May 1904. Age when married, in 16th year.

Place where married.—Roman Catholic Church.

Reason for requiring relief.—Two children. Husband left her and gone to America.

Solicitor's observations.—Husband went to America to improve his position, leaving the two children with his parents in Ireland. Applicant would like her two children, but his parents won't give them to her. She is now only 21 years of age, and the consequences of a separation at such an age may be very serious.

Is not the husband in this case practically dead so far as the applicant is concerned?

Solicitor's initials.—H. G. W.

D. No. 19.

13th November 1909.

Name.—L. E., wife of J. E.

Husband.—Living apart.

Date of marriage.—January 1896. Age when married, 18.

Place where married.—Church of England.

Reason for requiring relief.—Husband left her in 1902, with three children living, applicant being pregnant. Last child died. Joined Army, then she got 10*s.* a week allowance. Now left Army, but receiving reserve pay. Never paid anything since left Army. Threatened to take children. Last Easter took possession. Mother wants children back. Children now 12, 11, and 9. Divorce wished for, but under present law impossible. No proof of adultery by husband.

Solicitor's observations.—This is a case which shows a very serious defect in the practice of granting summonses for maintenance. The husband is daily at a well-known hotel, and takes out commercial travellers' samples, &c., and is well known to the management, &c., but as the wife cannot give a definite address for service a summons will not be granted.

Solicitor's initials.—C. G.

(No case for divorce.—H. G. W.)

(The solicitor who investigated this matter informs me that the applicant emphatically stated that she was informed that the summons would not be granted unless her husband's "residence" was given. If this is so it shows laxity either in the magistrate's clerk's department or on the part of the lay magistrates.—9.6.10., H. G. W.)

D. No. 20.

13th November 1909.

Name.—F. F.

Occupation.—Sheeting Department (L. and N.W. Railway). Wages, 24*s.*

Wife.—Living apart.

Date of marriage.—August 1889. Age when married, 28; wife, 21.

Place where married.—Church of England.

Reason for requiring relief. — Wife left him 13 months ago and returned for one month last March, and then left again. Has not been seen since.

Solicitor's observations.—It is probable that wife is living in adultery, only applicant has no proof. He has not attempted to get any proof up to the present time. Applicant could not possibly find more than 10*l.*

Solicitor's initials.—F. B.

D. No. 21.

10th November 1909.

Name.—L. F., wife of J. F.

Occupation of applicant.—Shirtmaker.

Husband.—Living apart.

Date of marriage.—January 1895. Age when married, 21.

Place where married.—Registry Office.

Nature of relief required.—Divorce.

Reason for requiring relief.—Husband deserted her October 1898. Has obtained separation order and maintenance, 10*s.* a week. Never paid. No information as to husband.

Solicitor's initials.—C. G.

D. No. 22.

20th November 1909.

Name.—E. F., wife of G. F.

Occupation of applicant.—Mantle maker.

Husband.—Living apart.

Date of marriage.—December 1896. Age when married.—22.

Place where married.—Church of England.

Nature of relief required.—Separation order.

Reason for requiring relief.—Persistent cruelty.

Solicitor's observations.—Applicant was not aware that husband had ever been guilty of adultery. If applicant had any ground for divorce she could not afford to pay anything; only earning 10*s.* per week. Helped by father, aged 82, who had a pension of 5*s.* per week, and another source of income which brought in 5*s.* per week.

Solicitor's initials.—G. B.

(No case for divorce.—H. G. W.)

D. No. 23.

13th November 1909.

Name.—J. F.

Occupation.—Insurance agent.

Wife.—Living apart.

Date of marriage.—December 1893. Age when married, 20; wife, 20.

Place where married.—Church of England.

Reason for requiring relief.—Children two, aged 14 and 15 respectively, living with applicant.

Solicitor's observations. — Wife left applicant in July 1898, and has not seen her since. He is quite certain that she is living with some other man (if she is alive), for subsequently to her leaving him he found out that in her previous life, when living with him, she was guilty of misconduct. Although applicant has no desire to be married again he is most anxious to obtain

a divorce on account of his children. The expense of divorce to applicant is too great. He could afford about 20*l.* at the very most.

Solicitor's initials.—F. B.

D. No. 24.

22nd November 1909.

Name.—T. J.

Occupation.—Ring doubler.

Date of marriage.—August 1901. Age when married, 22; wife's age, 21.

Place where married.—Church of England.

Nature of relief required.—Separation (? divorce) and custody of child (5 years old).

Reason for requiring relief.—Adultery of wife.

Solicitor's observations.—Applicant could pay a small sum for divorce, but, owing to his financial position, his child has to be left with his wife who is living in adultery.

Solicitor's initials.—H. G. W.

D. No. 25.

13th November 1909.

Name.—J. L., wife of M. L.

Occupation of husband.—Music hall artist.

Husband.—Living apart.

Date of marriage.—February 1882. Age when married, 17.

Reason for requiring relief.—Number of children five, all living with applicant, aged 27, 24, 20, 14, 9. Husband left applicant six years ago. He is at present living with another woman. No means for separation, much less divorce.

Solicitor's initials.—F. B.

D. No. 26.

13th November 1909.

Name.—E. M., wife of T. M.

Occupation of husband.—Labourer.

Date of marriage.—October 1909. Age when first married, 19.

Place where married.—Church of England.

Memo.—Department had been previously consulted by applicant's present husband before they were married as to whether or not he could safely marry applicant.

Solicitor's observations.—Applicant was previously married 17 years ago at the same church to a man who left her six weeks after marriage. She has not heard of him for the last 10 years.

Solicitor's initials.—H. G. W.

D. No. 27.

13th November 1909.

Name.—J. M.

Occupation.—Carter, 22*s.* per week.

Date of marriage.—December 1896. Age when married, 24.

Place where married.—Church of England.

Nature of relief required.—Divorce.

Reason for requiring relief.—Wife left applicant first week in April last, leaving with a man who was lodging with them and is now living with him. One child of marriage, 13 years of age (boy).

Solicitor's observations.—Would be able to pay a small sum for a divorce (up to 10*l.*).

Solicitor's initials.—H. G. W.

D. No. 28.

13th November 1909.

Name.—S. M.

Occupation.—Labourer; wages, 32*s.*

Date of marriage.—1883. Age when married, 27.

Place where married.—Church of England.

Solicitor's observations.—Separation order made against applicant on ground of desertion in December 1908. 7*s.* 6*d.* per week. Cause of desertion, money differences. Wife is now living in adultery.

Solicitor's initials.—F. B.

D. No. 29.

13th November 1909.

Name.—W. M., wife of J. W. M.

Occupation of applicant.—Caretaker.

Husband.—Living apart.

Date of marriage.—March 1899. Age when married, 20.

Place where married.—Church of England.

Reason for requiring relief.—Separation order, February 2nd, 1909. 5*s.* a week. No children. Earning 17*s.* 6*d.* Rent, coal, and gas. Husband has taken furniture. Husband not paying. Husband wants to return; very drunken. If returns to husband position of caretaker lost.

Solicitor's observations.—Wife has not considered question of divorce; states that she has had enough of husbands.

Solicitor's initials.—C. G.

(Memo.—No reason for divorce as no suggestion of adultery.—H. G. W.)

D. No. 30.

13th November 1909.

Name.—C. M.

Occupation.—Warehouse porter.

Wife.—Living apart.

Date of marriage.—September 1884. Age when married, 19.

Place where married.—Church of England.

Nature of relief required.—Guilty party.

Reason for requiring relief.—Took drink, and hence separation. Wife now living with another man. Supposed to be lodger. Another married man frequently calling there.

Solicitor's observations.—No absolute evidence, but very strong suspicions. If the man were able to have wife watched, no doubt evidence could be found.

Solicitor's initials.—H. G. W.

D. No. 31.

20th November 1909

Name.—C. W. N.

Occupation.—Cook.

Wife.—Living apart.

Date of marriage.—July 1900. Age when married, 28.

Place where married.—Church of England.

Nature of relief required.—Divorce.

Reason for requiring relief.—Wife living with lodger for past two years; had child by lodger 11th May 1909.

Solicitor's observations.—Might be able to raise 10*l.* for a divorce, but this would be maximum; number of witnesses.

Solicitor's initials.—H. G. W.

D. No. 32.

13th November 1909.

Name.—E. O., wife of A. E. O.

Occupation of applicant.—Office cleaner.

Husband.—Living apart.

Date of marriage.—April 1896. Age when married, 24.

Place where married.—Church of England.

Reason for requiring relief.—Separation order granted May 1905, on grounds of cruelty and neglect.

Solicitor's observations.—Husband left the kingdom and has not complied with separation order. This is a very hard case, as the applicant is of a very superior class of woman, and if she had been free could have made a good marriage. She has to clean offices for a living.

Solicitor's initials.—H. G. W.

D. No. 33.

29th November 1909.

Name.—H. P., wife of G. P.

Occupation.—Unknown.

Husband.—Living apart.

Date of Marriage.—August 1874. Age when married, 21.

Place where married.—Church of England.

Nature of relief required.—As to separation obtained.

Reason for requiring relief.—Married 35 years. Seven children born, four living. On 21st January

1898, order made by magistrates for payment of 12*s.* 6*d.* per week, in consequence of desertion. Payments made irregularly. Husband been living with another woman, one child having been born but since died. On account of quarrels husband approached applicant and induced her to resume cohabitation. Now again deserted applicant. Husband resumed cohabitation with woman.

Solicitor's observations.—A fit case for divorce.

Solicitor's initials.—J. B. G.

D. No. 34.

15th November 1909.

Name.—S. A. P., wife of T. P.

Occupation of husband.—Hawker.

Husband.—Living apart.

Date of marriage.—November 1896. Age when married, 19.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Desertion, has been cohabiting with woman.

Solicitor's observations.—Four children (10, 5, 2 years, and 3 months); two children deceased. Cannot afford even to pay a solicitor to appear for her on application for separation. Husband has served six months out of last 12 months for neglect of family.

Solicitor's initials.—H. G. W.

D. No. 35.

19th November 1909.

Name.—W. R.

Occupation.—Railway goods porter.

Wife.—Living apart.

Date of marriage.—July 1897. Age when married, 21 years.

Place where married.—Church of England.

Nature of relief required.—Divorce.

Reason for requiring relief.—Two weeks after marriage wife left home and remained away three nights. Afterwards brought home by applicant; stayed at home three weeks and when applicant arrived home on the following Saturday (at end of three weeks), found house empty, furniture sold by wife which belonged to applicant. Afterwards saw wife Easter, 1899, then gave her 8*s.* per week. Afterwards found living with another man. Since ascertained had four children by other men. Wife has no children by applicant. Applicant in lodgings. Wages, 19*s.* 10*d.* per week.

A deserving case and one fit for divorce.

Solicitor's initials.—J. B. G.

D. No. 36.

13th November 1909.

Name.—M. A. R., wife of W. H. R.

Occupation of husband.—Moulder.

Husband.—Living apart.

Date of marriage.—August 1905. Age when married, 18.

Place where married.—Church of England.

Reason for requiring relief.—Desertion; husband has cohabited with another woman. Two children.

Solicitor's observations.—Order made, 5*s.* per week, November 1908. If could afford a divorce would prefer one. Earns 8*s.* per week by working in warehouse.

Solicitor's initials.—H. G. W.

D. No. 37.

10th November 1909.

Name.—I. R.

Occupation.—Tailor, earns 20*s.* to 25*s.* per week.

Wife.—Living apart.

Date of marriage.—August 1908. Age when married, 26 years.

Place where married.—Synagogue.

Nature of relief required.—Divorce.

Reason for requiring relief.—Wife cohabiting with lodger in her mother's house. One child of marriage left with applicant.

Solicitor's observations.—Applicant could not afford to take witnesses to London even if he had a free divorce.

Solicitor's initials.—H. G. W.

D. No. 38.

17th November 1909.

Name.—E. A. S., wife of F. S.

Occupation of applicant.—Charwoman.

Husband.—Living apart.

Date of marriage.—December 1892. Age when married, 29.

Place where married.—Church of England.

Nature of relief required.—Desired to know if could re-marry or could obtain divorce.

Reason for requiring relief.—Not seen husband for last 12 years. Heard of him last three years ago. Have obtained three magistrates' orders against husband for maintenance in consequence of assaults committed. Husband been convicted on many occasions for felony and other offences (stealing fowls, lead, &c.). Orders made against husband on bastardy summons.

Solicitor's observations.—Advised applicant she could obtain divorce, but could not re-marry (unless divorced) without being liable to prosecution for bigamy.

Solicitor's initials.—J. B. G.

D. No. 39.

10th November 1909.

Name.—H. S.

Occupation.—Fitter.

Wife.—Living apart.

Date of marriage.—July 1904. Age when married, 24.

Place where married.—Registry Office.

Nature of relief required.—Divorce.

Reason for requiring relief.—Wife left him about April 1905. No children. Previously married; one child. Wife has been living with other men. At present in prison for assaulting man with whom she has gone through marriage ceremony. Husband has been requested to give evidence for bigamy. Wages, 25*s.* per week.

Solicitor's observations.—This is a very suitable case for divorce, but husband unable to pay any expenses.

Solicitor's initials.—C. G.

(MEMO.—I have seen this applicant on several occasions and believe he ought to be able to pay 10*l.* towards cost of divorce.—H. G. W.)

D. No. 40.

8th November 1909.

Name.—R. S.

Occupation.—Engineer (when working); at present unemployed.

Date of marriage.—April 1890. Age when married, 24 years.

Place where married.—Church of England.

Reason for requiring relief.—After birth of three children wife became infatuated, leaving applicant with two children, taking the youngest child, 6 months old, with her, and lived with another man. Subsequently one child was born, this man being the father. Arrangements were made by applicant for his parents to take care of his two children, he going to Canada. On returning to England, 12 months last March, saw wife and she begged to resume cohabitation, pleading that she would reform and atone for past offences. Applicant forgave his wife on condition that the illegitimate child should not be brought to the house. After resuming cohabitation wife now threatens to bring illegitimate child to the house, and this has caused trouble between applicant and his wife who has had to leave. Wife now threatens to commence proceedings unless she receives 15*s.* per week maintenance.

Solicitor's initials.—J. B. G.

D. No. 41.

20th November 1909.

Name.—S. T., wife of W. H. T.

Occupation of husband.—Iron turner. Wages, 2*l.* and bonus,

Date of marriage. — June 1882. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—For cruelty; advised no case. Children, three living, all under 21.

Solicitor's observations.—Applicant's husband has been for some time living in adultery. Could possibly pay 10*l.*

Solicitor's initials.—F. B.

D. No. 42.

10th November 1909.

Name.—M. T., wife of W. J. T.

Occupation of husband.—Sawyer.

Date of marriage. — July 1899. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—To be enabled to marry again.

Reason for requiring relief.—Not heard of husband for last seven years. Husband went to the war 10 years ago. Up to declaration of peace applicant received pay from War Office. Then War Office reported that he had been drafted home. Not heard of or from him since. Now wants to re-marry.

Solicitor's observations.—Neither War Office nor husband's people know of his whereabouts. After married short time, husband communicated venereal disease to applicant, which has since been cured. Applicant is only 28 years of age now. What will be the result of her not being in a position to enter into a valid marriage?

Solicitor's initials.—H. G. W.

D. No. 43.

10th November 1909.

Name.—W. W.

Occupation.—Drainer.

Date of marriage.—September 1895. Age when married, 23; wife, 21.

Nature of relief required.—Divorce.

Reason for requiring relief.—Wife is pregnant by a youth, aged 18. Husband positive he is not the father, but knows that proof would be difficult. This couple had 11 children in 12 years!! Four only are now living.

Solicitor's observations.—Husband seems respectable working man and is greatly incensed against the youth, but sees that his wife is probably most to blame. If the youth had means he would go in for a divorce, but is unable to do so on ground of expense, and the matter will probably end in desertion, and if the husband takes the children, as he probably would, it would probably mean a life of immorality for the wife.

Solicitor's initials.—E. Y.

D. No. 44.

29th November 1909.

Name.—J. H. D.

Occupation.—Labourer.

Wife.—Living apart.

Date of marriage.—March 1893. Age when married, 20; wife, 19.

Place where married.—Church of England.

Nature of relief required.—Custody of son aged 15½. Divorce *in formâ pauperis* desired.

Reason for requiring relief. — Wife living with another man. Four illegitimate children. Wife has caused son to leave his father. Applicant wishes to marry again (if possible).

Solicitor's observations.—The applicant has been a soldier (Garrison Artillery), 15 years' service. On return found wife living with another man. Son came to father on his return, placed with aunt, mother caused lad to come back to her. Applicant has allowed wife regular maintenance during married life up to discovery of misconduct, but nothing since. Advised to obtain custody of son.

Solicitor's initials.—H. S.

D. No. 45.

29th November 1909.

Name.—A. K., wife of A. J. K.

Occupation of husband.—Builder and contractor.

Husband.—Living apart.

Date of marriage.—July 1890. Age when married, 25.

Place when married.—Church of England.

Nature of relief required.—Maintenance or divorce.

Reason for requiring relief.—Husband deserted. Gone to Australia with another woman with whom he had married (bigamously).

Solicitor's observations. — Case for divorce but unable to bear expense.

Solicitor's initials.—A. E. H.

D. No. 46.

20th November 1909.

Name.—A. R., wife of A. R.

Occupation of husband.—Labourer.

Husband.—Living apart.

Date of marriage.— Christmas day, 1885. Age when married, 24.

Place where married.—Church of England.

Nature of relief required.—Divorce.

Reason for requiring relief.—Cruelty. Husband committed for common assault 13 years ago. Is living with a woman by whom he has a child.

Solicitor's observations. — Has no means, consequently divorce impossible.

Solicitor's initials.—H. G. W.

D. No. 47.

20th November 1909.

Name.—T. S., wife of G. E. S.

Occupation of applicant.—Housekeeper.

Husband.—Living apart.

Date of marriage. - June 1870. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—Divorce or separation.

Reason for requiring relief.—Husband deserted applicant December 1907 (leaving her with seven children); living with another woman.

Solicitor's observations.—Applicant might be able to raise a sum up to 10*l.* if she could obtain a divorce for that sum.

Solicitor's initials.—H. G. W.

D. No. 48.

20th November 1909

Name.—M. S., wife of A. S.

Occupation of husband.—Insurance agent.

Husband.—Living apart.

Date of marriage. — August 1896. Age when married, 19.

Place where married.—Wesleyan Church.

Nature of relief required.—Separation agreement.

Reason for requiring relief.—Husband now living with another woman.

Solicitor's observations.—Husband also came and said his wife nearly ruined him by extravagant living and says that when separated he was compelled to get a housekeeper. Hence his present condition of life. Wife is not at present anxious for a divorce.

Solicitor's initials.—H. G. W.

D. No. 49.

20th November 1909.

Name.—E. V., wife of M. V.

Occupation of husband.—Photographer.

Husband.—Living apart.

Date of marriage.—June 1907. Age when married, 19.

Place where married.—Registry Office.

Nature of relief required.—Divorce.

Reason for requiring relief.—Husband deserted applicant 16th October 1907, and went back to Belgium. Has since married again in Paris.

Solicitor's observations.—No means of obtaining divorce owing to poverty. Wants to marry again. Fear that inability will lead to immorality.

Solicitor's initials.—H. G. W.

D. No. 50.

20th November 1909.

Name.—G. W.
Occupation.—Labourer.
Wife.—Living apart.
Date of marriage.—1895. Age when married, 23.
Place where married.—Church of England.
Reason for requiring relief.—Wife living in adultery, and when consulted before was pledging his credit.
Solicitor's observations.—Has no immediate necessity for divorce.

Solicitor's initials.—H. G. W.

D. No. 51.

13th November 1909.

Name.—W. B.
Occupation.—Labourer.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief. — Wife living in adultery.
Solicitor's observations.—Applicant earning 15*s.* to 20*s.* per week. Might raise very small sum if able to obtain divorce.

Solicitor's initials.—H. G. W.

D. No. 52.

13th November 1909.

Name.—S. E. C., wife of J. C.
Husband.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Husband now serving time for bigamy.
Solicitor's observations.—Applicant deprived of her rights by reason of her impecunious position.

Solicitor's initials.—H. G. W.

D. No. 53.

13th November 1909.

Name.—J. C.
Occupation.—Labourer.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife living with another man by whom she has had four children.
Solicitor's observations.—Applicant would do his utmost to raise (say) 10*l.* (which would be his limit), if he could get a divorce.

Solicitor's initials.—H. G. W.

D. No. 54.

13th November 1909.

Name.—J. H.
Occupation.—Moulder.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife living in adultery.
Solicitor's observations.—This applicant might be able to raise 20*l.* towards costs of divorce. He is clearly entitled to one.

Solicitor's initials.—H. G. W.

D. No. 55.

13th November 1909,

Name.—J. M.
Occupation.—Labourer.
Wife.—Living apart.
Nature of relief required.—Separation or divorce.
Reason for requiring relief.—Wife living in adultery.
Solicitor's observations. — Applicant wanted a separation in police court for his children's sake. Could not obtain same. If had been wealthier could have obtained divorce.

Solicitor's initials.—H. G. W.

D. No. 56.

13th November 1909.

Name.—E. A. P., wife of J. N. P.
Occupation of husband.—Architect.
Husband.—Living apart.
Nature of relief required.—Maintenance. Divorce.
Reason for requiring relief.—Husband deserted her and is now living in Paris.
Solicitor's observations.—Misconduct *could surely* be inferred from surrounding circumstances and might easily be proved if applicant were in a financial position to do so.

Solicitor's initials.—H. G. W.

D. No. 57.

13th November 1909.

Name.—G. A. P.
Occupation.—Salesman.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife has left him and he hears that she is misconducting herself with men.
Solicitor's observations.—Applicant could be able to raise 20*l.* (at the utmost) towards cost of a divorce.

Solicitor's initials.—H. G. W.

D. No. 58.

13th December 1909.

Name.—A. N., wife of A. N.
Occupation of husband.—Railway guard; wages 30*s.*
Date of marriage.—1900. Age when married, 25.
Place where married.—Church of England.
Nature of relief required.—Separation. Preferably divorce.
Reason for requiring relief.—Husband contracted venereal disease and infected applicant. Still goes with women, and tells his wife to leave him, using very filthy language.
Solicitor's observations.—When applicant infected with disease she would have left her husband and commenced proceedings for divorce if she had known it had been possible and she had possessed sufficient money. Ignorance and poverty prevented her acting. Now she cannot even obtain separation order.

Solicitor's initials.—H. G. W.

D. No. 59.

6th December 1909.

Name.—W. B.
Occupation.—Carter.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife left applicant and believed to be leading an immoral life.
Solicitor's observations.—Applicant could find small sum for divorce.

Solicitor's initials.—H. G. W.

D. No. 60.

6th December 1909.

Name.—W. D.
Occupation.—At present unemployed.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief. — Wife living in adultery.
Solicitor's observations.—Applicant has no means whatever.

Solicitor's initials.—H. G. W.

D. No. 61.

6th December 1909.

Name.—J. F., wife of W. A. F.
Occupation of husband.—Dairyman.
Husband.—Living apart.
Date of marriage.—December 1904. Age when married, 24.
Place where married.—Registry Office.
Nature of relief required.—Separation.
Reason for requiring relief.—Desertion and alleged adultery.

Solicitor's observations. — Applicant entitled to separation order.

Solicitor's initials.—J. D. R.

D. No. 62.

6th December 1909.

Name.—E. H., wife of C. W. H.
Occupation of husband.—Unknown.
Husband.—Living apart.
Nature of relief required.—Declaration of decease of husband.
Reason for requiring relief.—Not heard of husband for past five years.
Solicitor's observations.—Applicant desires to remarry. It is feared that her inability to do so will lead to immorality.

Solicitor's initials.—H. G. W.

D. No. 63.

6th December 1909.

Name.—E. McN.
Occupation.—Warehouseman.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief. — Wife living in adultery.
Solicitor's observations.—Applicant might be able to raise 10*l*. to 15*l*.

Solicitor's initials.—H. G. W.

D. No. 64.

6th December 1909.

Name.—M. A. P., wife of J. T. P.
Occupation of husband.—Collier.
Husband.—Living apart.
Nature of relief required.—Divorce (?).
Reason for requiring relief.—Husband left applicant four years ago and lived with another woman. Applicant two years later went to live with another man. Children, three by husband, and one illegitimate.
Solicitor's observations.—If wife had been able to obtain cheap divorce would this have happened?

Solicitor's initials.—H. G. W.

D. No. 65.

6th December 1909.

Name.—W. P.
Occupation.—Colour maker.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife has misconducted herself with the lodger.
Solicitor's observations.—Applicant might be able to find small sum towards costs of divorce.

Solicitor's initials.—H. G. W.

D. No. 66.

6th December 1909.

Name.—M. P., wife of G. P.
Occupation of husband.—Butcher.
Husband.—Living apart.
Date of marriage.—October 1907. Age when married, 22.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Children, two; both aged under 15 months. Cruelty and adultery.
Solicitor's observations.—Good case for divorce. No means whatever. Has land. Only earning 30*s*. per week.

Solicitor's initials.—F. B.

D. No. 67.

6th December 1909.

Name.—M. R., wife of J. R.
Occupation of husband.—Warehouseman.
Husband.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Husband living with another woman. Two children of the marriage. Husband allows applicant 7*s*. per week for maintenance of herself and the children.
Solicitor's observations.—No means for divorce.

Solicitor's initials.—H. G. W.

D. No. 68.

6th December 1909.

Name.—E. W., wife of J. W.
Occupation of husband.—Clerk.
Husband.—Living apart.
Date of marriage. — August 1906. Age when married, 30.
Place where married.—Registry Office.
Nature of relief required.—Divorce.
Reason for requiring relief.—Two children, aged 2 and 3. Adultery and desertion.
Solicitor's observations.—No money for divorce. Could afford 5*l*. or 10*l*.

Solicitor's initials.—F. B.

D. No. 69.

6th December 1909.

Name.—M. T., wife of W. T.
Occupation of husband.—Soldier (when last heard of).
Date of marriage.—1899. Age when married, 18.
Nature of relief required.—Declaration of decease of husband.
Reason for requiring relief.—Not heard of husband for three years, since he left the country.
Solicitor's observations.—Applicant desires to remarry. What will be the result seeing that she cannot?

Solicitor's initials.—H. G. W.

D. No. 70.

13th November 1909.

Name.—A. H., wife of W. H.
Occupation of husband.—Pavior.
Date of marriage.—October 1895. Age when married, 23.
Reason for requiring relief.—One child of marriage.
Solicitor's observations.—Applicant separated from her husband by reason of cruelty and desertion. During separation husband cohabited with another married woman, who also was living separate from her husband. At the time applicant would have desired a divorce if it had been within her means. She has since forgiven her husband for the sake of this child. He still ill-uses her, and she does not know if she can continue to live with him.

Solicitor's initials.—H. G. W.

(B.)

EXHIBITS MARKED "M. 1." to "M. 90.," REFERRED TO IN THE EVIDENCE OF MR. HERBERT GREENWOOD WRIGLEY;

being notes of cases specially investigated by the following solicitors:—

Mr. Frank Barratt.
" Gilbert Barratt.
" William Dutton.
" Wm. Bowker Farrington.
" Jas. Brooke Garner.
" Charles Grundy.
" H. Gilman Jones.
" Wilfred H. Sell.
" S. A. Smith.
" H. Greenwood Wrigley.
" Edgar Youatt.

At the Art Museum and University Settlement, Ancoats, Manchester.

M. No. 1.

22nd November 1909.

Name.—E. A., wife of A. E. A.
Occupation of husband.—Labourer.
Husband.—Living apart.
Date of marriage.—November 1908. Age when married, 22; husband, 21.
Place where married.—Registry Office.
Nature of relief required.—Support.
Reason for requiring relief.—Child born, 23rd November 1908. Now six months pregnant. Husband left last Tuesday and refused to help her. Army

reservist. Has tried summons, but unable to find money to pay for summons.

Solicitor's observations.—Hard case; requires amendment of law.

Solicitor's initials.—C. G.

M. No. 2.

17th November 1900.

Name.—S. J. A., wife of J. A.

Date of marriage.—April 1908. Age when married, 21.

Place where married.—Church of England.

Reason for requiring relief.—That husband accused applicant of being immoral, she having a complaint the result of a previous illness.

Solicitor's observations.—Applicant was referred by Department to one of the charity organisations in the district, who satisfied the husband, after obtaining a medical certificate, that applicant's story was correct. Now living together again.

Solicitor's initials.—H. G. W.

M. No 3

10th November 1909.

Name.—H. A., wife of J. H. A.

Occupation of husband.—Cabinet maker.

Husband.—Living apart.

Date of marriage.—June 1900. Age when married, 18.

Place where married.—Wesleyan Chapel.

Nature of relief required.—Separation.

Reason for requiring relief.—Husband was jealous of her without cause, but did not do anything which would give her ground for obtaining separation order. She left him and he now maintains the two children of the marriage who live with his mother, and wife has access to them. Neither party is cohabiting with another person.

Solicitor's observations.—This is a case of "incompatibility of temper," which would have been best met by a separation agreement.

Solicitor's initials.—E. Y.

M. No. 4.

10th November 1909.

Name.—A. A.

Occupation.—Iron turner.

Date of marriage.—April 1907. Age when married, 24; wife 23.

Nature of relief required.—Separation.

Reason for requiring relief.—Could not agree with wife who was very quarrelsome from beginning. Allowed wife to obtain summons and order for 8s. a week. One child which wife took. Had courted wife five years before marriage. Wife now living in the Midlands. Husband does not know with whom or mode of life.

Solicitor's observations.—Husband appears respectable, and this seems a case where if parties had been in higher social position separation agreement would have been entered into. If wife's people had not interfered matters would probably have been "patched up" more or less satisfactorily.

Solicitor's initials.—E. Y.

M. No. 5.

10th November 1909.

Name.—M. A., wife of G. A.

Husband.—Living apart.

Date of marriage.—November 1907. Age when married, 28.

Place where married.—Church of England.

Nature of relief required.—Maintenance.

Reason for requiring relief.—Husband left her March 18th, 1909; ran her out of the house with razor after hitting her. No children. Has been advised to apply for summons. Summons refused until husband's address obtained.

Solicitor's initials.—C. G.

M. No. 6.

10th November 1909.

Name.—M. B., wife of W. B.

Occupation of husband.—Upholsterer.

Husband.—Living apart.

Date of marriage.—May 1907. Age when married, 48.

Place where married.—Registry Office.

Nature of relief required.—Separation.

Reason for requiring relief.—Husband drinks and uses filthy language, and has assaulted her when no one present. Cannot obtain separation order.

Solicitor's observations.—The applicant appeared to be a hard-working woman, and respectable. The language used was of such a vile nature that it amounted to gross cruelty. The husband cannot be considered a habitual drunkard. Hence she has no relief.

Solicitor's initials.—H. G. W.

M. No. 7.

10th November 1909.

Name.—P. B., wife of S. B.

Husband.—Living apart.

Date of marriage.—February 1872. Age when married, 18.

Place where married.—Church of England.

Reason for requiring relief.—Has obtained separation order, about 18 months ago. Reasons, cruelty and drunkenness. Is not getting any money from husband. Had been advised by solicitor.

Solicitor's observations.—This case shows the hardship which often arises. Court not issue a warrant unless the defendant's "residence" given at time of application.

Solicitor's initials.—C. G.

(*See* Note on D. 19.—H. G. W.)

M. No. 8.

20th November 1909.

Name.—D. L. B., wife of W. B.

Occupation of husband.—Unknown.

Husband.—Living apart.

Date of marriage.—May 1905. Age when married, 25.

Place where married.—Wesleyan Chapel.

Nature of relief required.—Separation or (?) divorce.

Reason for requiring relief.—Desertion for 12 months. Husband believed to be living in adultery.

Solicitor's observations.—Owing to applicant's position (cook in factory earning 15*s.* per week), she has not the means of tracing her husband. If she could get a divorce she would endeavour to raise 20*l.*

Solicitor's initials.—H. G. W.

M. No. 9.

15th November 1909.

Name.—J. B.

Occupation.—Warehouseman.

Date of marriage.—December 1888. Age when married, 29; wife 23.

Place where married.—Church of England.

Solicitor's observations.—Three children—20, 17, and 9 years. Separation order made July 1902, 10*s.* per week. While out of work was arrested for arrears. Order reduced to 8*s.* in 1903.

Solicitor's initials.—H. G. W.

(*See* M. 10.)

M. No. 10.

8th November 1909.

Name.—E. A. B., wife of J. B.

Occupation of husband.—Warehouseman.

Husband.—Living apart.

Date of marriage.—1890. Age when married, 23.

Place where married.—Church of England.

Reason for requiring relief.—On account of persistent cruelty applicant took out summons against husband. Orders made, and afterwards in each case applicant resumed cohabitation. Now separated;

order made for payment of 10s. per week, subsequently reduced to 8s. per week, which is still being paid.

Solicitor's initials.—J. B. G.

(*See* M. 9.)

M. No. 11.

20th November 1909.

Name.—M. H. B., wife of J. T. B.

Occupation of husband.—Dairyman.

Husband.—Living apart.

Date of marriage.—December 1905. Age when married, 31.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Obtained separation order in February 1909, and maintenance of 10s. per week. One child aged three months. Applicant separated from husband Christmas 1908.

Solicitor's observations.—From inquiries made it appears that the applicant's mother-in-law is the cause of the trouble between applicant and her husband, as she did not desire the applicant's husband to marry her.

Solicitor's initials.—J. B. G.

M. No. 12.

10th November 1909.

Name.—A. B., wife of W. B.

Occupation of husband.—Night watchman.

Husband.—Living apart.

Date of marriage.—June 1906. Age when married, 24.

Nature of relief required.—Advice as to liability of husband to pay expenses of confinement in respect of child born after voluntary separation.

Reason for requiring relief.—In this case the husband, after three months of married life, shirked work and habitually pretended to be ill in order that wife might support him. This went on for some considerable time and ultimately wife consulted the relieving officer who bluffed husband into paying 2s. 6d. a week. Wife is now keeping house for her sisters. Her only child is now dead.

Solicitor's observations.—This is a case which would have been suitable for a separation agreement if the parties had been advised at the proper time.

Solicitor's initials.—E. Y.

M. No. 13.

10th November 1909.

Name.—F. B., wife of F. R. B.

Occupation of husband.—Market porter.

Husband.—Living apart.

Date of marriage.—November 1899. Age when married, 23.

Place where married.—Registry Office.

Nature of relief required.—Separation order.

Reason for requiring relief.—Cruelty and desertion.

Solicitor's observations.—Applicant cannot work owing to heart trouble. Husband says he will save up for a new home and will live with applicant again but she fears he will be cruel to her.

Solicitor's initials.—H. G. W.

M. No. 14.

10th November 1909.

Name.—E. E. C., wife of E. G. C.

Occupation of husband.—Railway goods guard.

Date of marriage.—April 1896. Age when married, 30.

Nature of relief required.—Separation.

Reason for requiring relief.—Assault and abusive language.

Solicitor's observations.—Parties are living together again, having been advised to settle their differences when applicant consulted department in May last.

Solicitor's initials.—H. G. W.

M. No. 15.

22nd November 1909.

Name.—A. C., wife of F. C.

Occupation of husband.—Joiner.

Husband.—Living apart.

Date of marriage.—October 1888. Age when married, 24.

Place where married.—Registry Office.

Nature of relief required.—Advice.

Reason for requiring relief.—Wife wants to go to Hyde to live, but does not want her husband to know address, for she is afraid of him coming and annoying her; yet she does not want to lose the maintenance allowance of 7s. per week.

Solicitor's initials.—H. G. J.

M. No. 16.

20th November 1909.

Name.—S. J. C., wife of J. C.

Occupation of husband.—Labourer, 25s. a week.

Husband.—Living apart.

Date of marriage.—May 1884. Age when married, 22; husband, 33.

Place where married.—Congregational Chapel.

Solicitor's observations.—Obtained separation order on ground of persistent cruelty. Order, 5s. per week. Husband's wages, 25s. a week (about). This with the wages of a small boy, 10s. 6d. a week, is the total amount applicant and boy have to live on. Applicant does not know whether he is living in adultery or not.

Solicitor's initials.—F. B.

M. No. 17.

13th November 1909.

Name.—M. C., wife of J. C.

Occupation.—Cleaner.

Husband.—Living apart.

Date of marriage.—About 20 years ago. Age when married, 33.

Place where married.—Registry Office.

Nature of relief required.—Maintenance.

Reason for requiring relief.—Summoned husband about 10 years ago. Order—keep peace for six months and maintenance 6s. per week. Maintenance paid up to July 1908.

Solicitor's observations.—Has no information as to husband, and does not care whether she gets a divorce or not so long as her money is paid regularly.

Solicitor's initials.—C. G.

M. No. 18.

10th November 1909.

Name.—M. C., wife of P. C.

Occupation of husband.—Bookmaker's clerk.

Date of marriage.—October 1904. Age when married, 27.

Place where married.—Roman Catholic Church.

Nature of relief required.—Separation order.

Reason for requiring relief.—Husband assaults applicant and leads a "fast" life. Betting and gambling. Applicant does not think that he lives with other women.

Solicitor's observations.—Applicant would be quite willing to live with her husband, but he will neither give up betting and gambling nor settle down to live at home.

Solicitor's initials.—H. G. W.

M. No. 19.

10th November 1909.

Name.—M. A. C., wife of J. C.

Occupation of husband.—Tinplate worker.

Husband.—Living apart.

Date of marriage.—January 1901. Age when married, 22.

Place where married.—Roman Catholic Church.

Nature of relief required.—Maintenance.

Reason for requiring relief.—Husband deserted her July 6th, 1909; received nothing from him; summons refused.

Solicitor's observations.—This is another of the cases where nothing can be done unless husband's address obtained, as summons refused.

Solicitor's initials.—C. G.

(*See* note on D. 19.)

M. No. 20.

10th November 1909.

Name.—J. C.
Occupation.—Carter.
Date of marriage.—June 1905. Age when married, 21.
Place where married.—Registry Office.
Nature of relief required.—Separation order.
Reason for requiring relief.—Persistent cruelty.
Solicitor's observations.—Settled before summons heard and parties living together again in conjugal bliss.

Solicitor's initials.—G. B.

M. No. 21.

13th November 1909.

Name.—J. H. D.
Occupation.—Labourer.
Date of marriage.—June 1874. Age when married, 19.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reasons for requiring relief.—Summons taken out by wife in July last and order made for 7*s.* 6*d.* per week. Desertion.

Solicitor's initials.—F. B.

M. No. 22.

15th November 1909.

Name.—F. D., wife of R. D.
Occupation of husband.—Wireworker.
Husband.—Living apart.
Date of marriage.—June 1903. Age when married, 21.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Cruelty and desertion. Drinks, and will not work.
Solicitor's observations.—Applicant is a packer at jam works, and earns about 10*s.* per week, average.

Solicitor's initials.—H. G. W.

M. No. 23.

13th November 1909.

Name.—M. H. D., wife of B. D.
Occupation of applicant.—Winder.
Date of marriage.—November 1901. Age when married, 36.
Place where married.—Registry Office.
Reason for requiring relief.—Husband on short time for last three years, now out of work. Husband ought to have at least 10*s.* a week from society; generally drinks same. Largest amount contributed to household, 4*s.* 7*d.* a week. Wife often has to leave home to avoid assault. Has sold up house several times. Never takes him before magistrates.
Solicitor's observations.—As wife has not taken advantage of the remedies which she at present has, cannot but think that she would not take advantage of any alteration of the law.

Solicitor's initials.—C. G.

M. No. 24.

20th November 1909.

Name.—S. D.
Occupation.—Striker.
Date of marriage.—August 1875. Age when married, 20.
Place where married.—Church of England.
Nature of relief required.—Separation (now not required).
Reason for requiring relief.—Owing to wife being a Roman Catholic there is continuous friction.
Solicitor's observations.—Since previous consultation applicant has settled matters in dispute with his wife, and they are trying to live together.

Solicitor's initials.—H. G. W.

M. No. 25.

13th November 1909.

Name.—R. E., wife of S. E.
Occupation of husband.—Driller.
Date of marriage.—September 1880. Age when married, 22.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reasons for requiring relief.—Husband drunken and dirty.
Solicitor's observations.—Since applicant consulted us her husband has improved; has become more sober and living fairly happily together.

Solicitor's initials.—H. G. W.

M. No. 26.

13th November 1909.

Name.—A. F., wife of M. F.
Husband.—Living apart.
Date of marriage.—October 1878. Age when married, 23.
Reason for requiring relief.—Separation order obtained, maintenance 5*s.* a week and furniture. Husband very insulting when paying maintenance. Advised to see magistrates if money could not be paid into court.
Solicitor's observations.—Application refused, but effect has been no further trouble.

Solicitor's initials.—C. G.

M. No. 27.

13th November 1909.

Name.—E. F., wife of A. F.
Occupation of husband.—Scythemaker.
Date of marriage.—August 1895. Age when married, 20.
Place where married.—Church of England.
Reason for requiring relief.—Husband drinks.
Solicitor's observations.—Husband has reformed, and parties are living happily.

Solicitor's initials.—H. G. W.

M. No. 28.

13th November 1909.

Name.—C. G., wife of S. G.
Occupation of husband.—Drainer.
Date of marriage.—March 1872. Age when married, 22.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband drinks and pawns everything; will not work. Seven children.
Solicitor's observations.—Applicant has been advised to leave her husband, it being understood that her sons would look after her.

Solicitor's initials.—H. G. W

M. No. 29.

20th November 1909.

Name.—E. G., wife of J. H. G.
Occupation of husband.—Joiner.
Husband.—Living apart.
Date of marriage.—December 1869. Age when married, 18.
Place where married.—Church of England.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Deserted.
Solicitor's observations.—Husband paying fairly regularly under order. No cause to interfere.

Solicitor's initials.—H. G. W.

M. No. 30.

20th November 1909.

Name.—L. G., wife of W. G.
Occupation of applicant.—Household duties.
Husband.—Living apart.
Date of marriage.—April 1879. Age when married, 20 years.
Place where married.—Church of England.
Nature of relief required.—Increase of payment of maintenance.
Reason for requiring relief.—Applicant not lived with husband for seven years. No proceedings have

been commenced, but applicant receives money from her husband. Originally arranged for payment of 10s. per week. Now averages 5s. per week. Husband living in Yorkshire, and about 10 years ago he was "walking out" with a single woman; later a child was born.

Solicitor's observations.—Visits applicant yearly on his holidays. Applicant would decline to live with him. Informed applicant that court would not make an order as she declines to resume cohabitation. Thirteen children all living. Three married. One left home and eight living at home.

Solicitor's initials.—J. B. G.

M. No. 31.

13th November 1909.

Name.—S. G.

Occupation.—Legging fitter.

Date of marriage.—July 1906. Age when married, 21.

Place where married.—Church of England.

Solicitor's observations.—Summoned for separation order on ground of desertion. Case dismissed. Now living again with wife. This shows the hardship which is occasionally met with by husbands owing to summons being granted to wives without proper inquiry into the matter. Husband says that if wife could have got an allowance she would have returned home, and probably better off financially than when living with husband.

Solicitor's initials.—C. G.

M. No. 32.

13th November 1909.

Name.—A. J. W. G.

Occupation.—Labourer, out of work.

Place where married.—Church of England.

Reason for requiring relief.—Wife left him Saturday, 23rd August 1908. Slept out all night. Since May last wife living with another man. No children. No claim for support.

Solicitor's observations.—Does not want divorce.

Solicitor's initials.—C. G.

M. No. 33.

22nd November 1909.

Name.—R. H., wife of H. H.

Occupation of husband.—Carter.

Husband.—Living apart.

Date of marriage.—April 1904. Age when married 17.

Place where married.—Registry Office.

Nature of relief required.—Separation order.

Reason for requiring relief.—Cruelty, neglect, drink.

Solicitor's observations.—One child; wife works, and has had to keep the home going.

Solicitor's initials.—H. G. W.

M. No. 34.

13th November 1909.

Name.—M. A. H., wife of G. H.

Husband.—Living apart.

Date of marriage.—August 1876. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—Separation order obtained 1905 enforcing.

Reason for requiring relief.—Husband left 13th September 1905. Now in arrear with payments.

Solicitor's initials.—C. G.

M. No. 35.

13th November 1909.

Name.—A. H., wife of H. H.

Occupation of husband.—Labourer.

Husband.—Living apart.

Date of marriage.—January 1907. Age when married, 25.

Place where married.—Registry.

Nature of relief required.—Maintenance.

Reason for requiring relief.—Threats, and starved applicant.

Solicitor's observations.—Employed as a stick varnisher; earns about 10s.

Solicitor's initials.—H. G. W.

M. No. 36.

17th November 1909.

Name.—A. J., wife of J. J.

Occupation of husband.—Grinder.

Husband.—Living apart.

Date of marriage.—1879. Age when married, 21.

Place where married.—Church of England.

Nature of relief required.—Separation order.

Reason for requiring relief.—Husband drunkard and abusive. Obtained separation and husband paid fairly regularly 16s. a week. Husband incapable of reformation. Wife would like to be free. Four children; one a cripple. No allegation of immorality.

Solicitor's observations.—Separation order seems to have met this case fairly well, but wife would prefer to be free. Drink sole cause of trouble.

Solicitor's initials.—S. A. S.

M. No. 37.

13th November 1909.

Name.—R. J.

Occupation.—Labourer.

Date of marriage.—August 1907. Age when married, 25.

Place where married.—Church of England.

Reason for requiring relief.—Separated from wife (1) November 1908; (2) April 1909; (3) September 1909. (1) six weeks; (2) three months; (3) still apart. Wife did not keep clean. Violent temper. Assaulted husband. Attempted life. One child born 31st January 1908, with wife. Had connection with wife before marriage. Wife denies his paternity. Wife at present with mother living chaste life. Wages 1*l.* a week, wife 15*s.* to 1*l.*

Solicitor's observations.—This is a case where probably a divorce is the only remedy. The husband has, however, only himself to blame, as he admits that he knew before marriage that his wife was little better than a prostitute, and that he himself had often had connection with her.

Solicitor's initials.—C. G.

M. No. 38.

13th November 1909.

Name.—E. J., wife of W. J.

Occupation of applicant.—Velvet finisher, 30*s.*

Husband.—Living apart.

Date of marriage.—August 1908. Age when married, 21.

Place where married.—Church of England.

Reason for requiring relief.—Agreement entered into by wife and husband for separation. Weekly allowance, 7*s.* There is one child of the marriage. Cruelty. No adultery.

Solicitor's observations.—No observations of interest.

Solicitor's initials.—F. B.

M. No. 39.

20th November 1909.

Name.—F. K., wife of R. J. K.

Occupation of applicant.—Machinist.

Husband.—Living apart.

Date of marriage.—September 1895. Age when married, 24.

Place where married.—Registry Office.

Nature of relief required.—Separation order obtained and required to be enforced.

Reason for requiring relief.—Maintenance not kept up.

Solicitor's observations.—Separation order obtained about six years ago on the ground of desertion. Two previous separation orders had been obtained, but in each case applicant had subsequently commenced living again with her husband. Four children (three dead). Husband had not, ever since separation or before, lived in adultery.

Solicitor's initials.—G. B.

M. No. 40.

13th November 1909.

Name.—H. L., wife of C. L.
Occupation of husband.—Tinplate worker.
Husband.—Living apart.
Date of marriage.—August 1884. Age when married, 18.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband would not work and drinks what he earns.
Solicitor's observations.—Matter heard by lay magistrate at City Police Court, who told her to go back to her husband, saying it was a pity to separate after 25 years married life. Could not afford to have a solicitor on the hearing. Applicant does a little charing.

Solicitor's initials.—H. G. W.

M. No. 41.

13th November 1909.

Name.—H. L., wife of R. L.
Date of marriage.—1885. Age when married, 37.
Place where married.—Church of England.
Nature of relief required.—Separation for drunkenness.
Solicitor's observations.—No observations which would be of any material use.

Solicitor's initials.—F. B.

M. No. 42.

13th November 1909.

Name.—A. L., wife of T. L.
Occupation of husband.—Labourer.
Husband.—Living apart.
Date of marriage.—August 1898. Age when married, 17.
Place where married.—Church of England.
Reason for requiring relief.—Husband deserted and was habitually cruel.
Solicitor's observations.—Since consulting us applicant has been granted a separation order with 8s. per week, dated 13th October; received so far 11s.

Solicitor's initials.—H. G. W.

M. No. 43.

13th November 1909.

Name.—S. A. L., wife of E. L.
Husband.—Living apart.
Date of marriage.—December 1878. Age when married, 24.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Husband left about six years ago. Has paid on account of maintenance up to June last. Since then nothing and no information. Application lately (August) to police; no trace of husband. At present dependent on unmarried daughter.

Solicitor's initials.—C. G.

M. No. 44.

22nd November 1909.

Name.—E. L., wife of W. H. L.
Occupation of applicant.—Machinist.
Husband.—Living apart.
Date of marriage.—23rd November 1901. Age when married, 40; husband, 44.
Place where married.—Church of England.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Owing to cruelty applicant left husband in 1904. He agreed to make her an allowance and only paid her 2s. Has already summoned husband, but not being represented, could not obtain order.
Solicitor's observations.—Applicant's only remedy is to accept parish relief and then guardians will compel husband to support. Need of cheap or even free relief shown.

Solicitor's initials.—H. G. W.

M. No. 45.

20th November 1909.

Name.—R. L., wife of P. L.
Occupation of husband.—Mill worker.
Husband.—Living apart.
Date of marriage.—October 1906. Age when married, 58.
Place where married.—Registry Office.
Solicitor's observations.—Separation on the ground of cruelty. Dismissed at the police court. No observations of any moment.

Solicitor's initials.—F. B.

M. No. 46.

17th November 1909.

Name.—M. McD., wife of J. McD.
Occupation of husband.—Railway labourer (in England).
Husband.—Living apart.
Date of marriage.—June 1905. Age when married, 26; husband, 25.
Place where married.—Roman Catholic Church.
Nature of relief required.—Separation.
Reason for requiring relief.—Desertion. Husband now in Ireland. When he returns she proposes to issue summons for desertion.
Solicitor's observations.—This is not a case where divorce would be applicable.

Solicitor's initials.—E. Y.

M. No. 47.

13th November 1909.

Name.—E. McG., wife of P. McG.
Occupation of husband.—Painter.
Husband.—Living apart.
Date of marriage.—August 1889. Age when married, 20.
Place where married.—Roman Catholic Church.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband would drink, and would not work, and deserted family. Nine children.

Solicitor's initials.—H. G. W.

M. No. 48.

13th November 1909.

Name M. M., wife of C. M.
Date of marriage.—October 1887. Age when married, 22.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband uses bad language and had assaulted her when first application made. Summons refused.

Solicitor's initials.—C. G.

M. No. 49.

20th November 1909.

Name.—E. M., wife of J. M.
Occupation of applicant.—Mantle maker.
Husband.—Living apart.
Date of marriage.—February 1900. Age when married, 30.
Place where married.—Roman Catholic Church.
Nature of relief required.—Separation order obtained, required enforcing.
Reason for requiring relief.—Order made by magistrates on the 2nd February 1906, for payment of 4s. per week towards maintenance of applicant and two children, aged 8 and 4 respectively, on grounds of persistent cruelty and assaults. Maintenance in arrear and advised as to applying for warrant.

Solicitor's initials.—J. B. G.

M. No. 50.

13th November 1909.

Name.—E. M., wife of R. M.
Occupation of husband.—Collier.
Husband.—Living apart.
Date of marriage.—February 1902. Age when married.—Then a widow.

Place where married.—Church of England.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Left and does not support.
Solicitor's observations.—Since seeing us he has regularly paid 5s. per week.
Solicitor's initials.—H. G. W.

M. No. 51.

17th November 1909.

Name.—M. A. M., wife of —. M.
Occupation of husband.—Professional footballer.
Husband.—Living apart.
Date of marriage.—June 1900. Age when married, 21; husband, 22.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband guilty of cruelty, but summons was dismissed as he alleged she was drunkard. Three children. Husband took two children. Husband footballer, 3l. per week. Wife is looking after one child.
Solicitor's observations.—Advised applicant that there were no means of making the husband pay for the support of child or children in her custody unless she and they became chargeable to the Poor Law Guardians.
Solicitor's initials.—E. Y.

M. No. 52.

22nd November 1909.

Name.—A. M., wife of E. M.
Occupation of husband.—Fitter.
Husband.—Living apart.
Date of marriage.—January 1907. Age when married, 27.
Place where married.—Registry office.
Nature of relief required.—Separation and maintenance.
Reason for requiring relief.—Husband very cruel. Applicant has been compelled to leave him and take out summons.
Solicitor's observations.—Applicant reports order made for payment of 5s. per week.
Solicitor's initials.—H. G. W.

M. No. 53.

20th November 1909.

Name.—J. M.
Occupation.—Labourer, gas department.
Date of marriage.—July 1904. Age when married, 26.
Place where married.—Church of England.
Nature of relief required.—As to position with regard to wife having taken furniture.
Reason for requiring relief.—On 17th April 1907, wife took furniture away and lived with her parent. Applicant residing with his parents. Wife took out summons against applicant for desertion, dismissed. Wife having furniture at present time. Two children of marriage. Applicant paying wife 6s. per week and having custody of children. Applicant's earnings 25s. per week.
Solicitor's observations.—Applicant at present time suffering from dyspepsia and rheumatism. Wife threatening to commence proceedings against applicant who states he intends leaving the country.
Solicitor's initials.—J. B. G.

M. No. 54.

20th November 1909.

Name.—M. E. N., wife of J. A. N.
Occupation of husband.—Painter.
Husband.—Living apart.
Date of marriage.—June 1889. Age when married, 22.
Place where married.—Church of England.
Husband left on Good Friday, 1906.
Solicitor's observations.—Does not desire any proceedings. Since applicant consulted, husband has regularly paid 15s. per week.
Solicitor's initials.—H. G. W.

M. No. 55.

20th November 1909.

Name.—S. J. N., wife of T. N.
Occupation of husband.—Tram guard.
Date of marriage.—November 1903. Age when married, 29.
Place where married.—Church of England.
Nature of relief required.—Separation order.
Reason for requiring relief.—Cruelty and desertion. No immorality within applicant's knowledge.
Solicitor's observations.—Applicant would have preferred to be absolutely free from her husband.
Solicitor's initials.—H. G. W.

M. No. 56.

13th November 1909.

Name.—H. N., wife of J. N.
Husband.—Living apart.
Date of marriage.—June 1901. Age when married, 21.
Place where married.—Church of England.
Reason for requiring relief.—Obtained separation order 10s. per week. Custody of child eight years old. Husband disappeared.
Solicitor's initials.—C. G.

M. No. 57.

13th November 1909.

Name.—J. O.
Occupation of applicant.—Fitter. Wages 39s. per week.
Date of marriage.—March 1883. Age when married, 20.
Place where married.—Roman Catholic Church.
Nature of relief required.—Separation.
Reason for requiring relief.—Wife habitual drunkard. Seven children, five sons and two daughters.
Solicitor's observations.—Has not yet applied for separation, but will do so shortly.
Solicitor's initials.—H. G. W.

M. No. 58.

20th November 1909.

Name.—M. P., wife of J. E. P.
Occupation of husband.—Fitter.
Date of marriage.—November 1890. Age when married, 22.
Place were married. Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband drank heavily, used bad language, illused applicant.
Solicitor's observations.—Since consulting us her husband has been more amenable to reason.
Solicitor's initials.—H. G. W.

M. No. 59.

13th November 1909.

Name.—E. P., wife of A. P.
Date of marriage.—Whit Thursday, 1902. Age when married, 18.
Place where married.—Church of England.
Nature of relief required.—Maintenance.
Reasons for requiring relief.—Husband left Saturday before first call, came back on Wednesday. Now signed pledge.
Solicitor's initials.—C. G.

M. No. 60.

13th November 1909.

Name.—C. P., wife of A. E. P.
Occupation of husband.—Mill hand.
Husband.—Living apart.
Place where married.—Church of England.
Reason for requiring relief.—Obtained separation order, default made, summons taken out for commitment not attended, advised second summons, now paying 10s. a week. No children. Husband's wages, 24s. all found.
Solicitor's observations.—This is a case where the assistance of the Department ought not to be invoked,

as wife is well aware of her remedies, and is negligent in exercising same. No question of divorce.

Solicitor's initials.—C. G.

M. No. 61.

13th November 1909.

Name.—E. P., wife of W. P.

Date of marriage.—March 1900. Age when married, 23.

Place where married.—Registry office.

Reason for requiring relief.—Is living with husband at his mother's; never had real home. Husband pays household expenses, but will not allow her any money. Has applied to Poor Law authorities. No satisfaction. Two children, 9 and 1½. Wages unknown. Pregnant; another child January. Husband won't give any assistance for necessities.

Solicitor's observations.—In this case there ought to be power to the Poor Law authorities, on the facts stated being properly verified, to take proceedings to compel husband to do his duty. Otherwise possible that both the mother and child may lose their lives in childbirth.

Solicitor's initials.—C. G.

M. No. 62.

13th November 1909.

Name.—A. P., wife of J. P.

Occupation of husband.—Moulder, 22*s*. per week.

Date of marriage.—November 1907. Age when married, 19.

Place where married.—Church of England.

Solicitor's observations.—Parties living happily together by reason of letter written by the Department to husband.

Solicitor's initials.—H. G. W.

M. No. 63.

15th November 1909.

Name.—M. P., wife of T. P.

Occupation of husband.—Labourer.

Husband.—Living apart.

Date of marriage.—Easter Saturday, 1908. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Cruelty and desertion.

Solicitor's observations. — One child. Applicant works at nut and bolt works, earns 5*s*. per week. Not money for summons.

Solicitor's initials.—H. G. W.

M. No. 64.

13th November 1909.

Name.—J. W. Q.

Occupation.—Labourer.

Date of marriage.—May 1901. Age when married, 26.

Place where married.—Roman Catholic Church.

Reason for requiring relief. — Children of the marriage, one aged 7 years, living with wife.

Solicitor's observations.—Question as to whether husband (applicant) could have an allowance reduced which he had to pay to his wife under the S.J. (M.W.) Act. No misconduct on either side.

Solicitor's initials.—F. B.

M. No. 65.

13th November 1909.

Name—K. R., wife of H. R.

Date of marriage.—May 1886. Age when married, 25.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief. — Husband scarcely ever sober. Very violent and abusive. Family of six (eldest 23) all at home. Applicant is in bodily fear.

Solicitor's observations.—Husband apparently does not go with other women. Probably not a case for divorce, even if applicant could afford it.

Solicitor's initials.—W. H. S.

M. No. 66.

20th November 1909.

Name.—S. J. R., wife of J. R.

Date of marriage.—Over 30 years ago. Age when married, 21 (?).

Nature of relief required.—Separation order.

Reason for requiring relief.—Persistent cruelty.

Solicitor's observations. — Applicant obtained the separation order asked for. Parties lived together two weeks after the order was made and they had lived together ever since. Applicant had no cause to complain of her husband except with regard to his cruelty when he was drunk, and matters in this respect had improved very much since the parties lived together after the separation order was made.

Solicitors' initials.—G. B.

M. No. 67.

17th November 1909.

Name.—L. S., wife of S. S.

Occupation of husband.—Formerly a greengrocer.

Date of marriage.—December 1904. Age when married, 20 years; husband, 29.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief. — Was deserted by husband and obtained a separation order with allowance of 5*s*. per week. Husband does very little work, but has army pension of 10*s*. 6*d*. per week. He has been imprisoned once for non-payment, and is very irregular in his payments. Woman has custody of the only child.

Solicitor's observations.—The wife has no knowledge of his living with another woman, and this is a case that seems adequately dealt with by means of a separation order.

Solicitor's initials.—E. Y.

M. No. 68.

17th November 1909.

Name.—E. A. S., wife of J. S.

Occupation of husband.—Bookmaker.

Date of marriage.—May 1897. Age when married. 20.

Place where married.—Church of England.

Nature of relief required.—Separation on ground of drunkenness and cruelty.

Reason for requiring relief.—Husband got drink regularly and ill-treated wife. One child of the marriage. Order for 8*s*. a week paid regularly. Are now cohabiting again. Habits of drinking only come on last two years.

Solicitor's observations.—Drink cause of trouble. Order obtained but abandoned; permanent settlement questionable, as husband has already had other bouts.

Solicitor's initials.—S. A. S.

M. No. 69.

17th November 1909.

Name.—C. S., wife of W. H. S.

Occupation of applicant.—House duty.

Date of marriage. — May 1889. Age when married, 20.

Place where married.—Church of England.

Solicitor's observations.— Applicant left husband in consequence of assault and abusive and threatening language. Summoned husband on four occasions but obtained no orders. Applicant agreeing to resume cohabitation. Five children, two working, two going to school and one cripple in Swinton Schools; husband paying applicant 6*s*. per week and desires to resume cohabitation, but applicant declines on account of language used by husband. The 6*s*. per week is paid by husband on account of husband being threatened by the Guardians to take proceedings.

Solicitor's initials.—J. B. G.

M. No. 70.

10th November 1909.

Name.—E. S.

Occupation.—Labourer on L. & Y. Co. Wages 18*s*. 10*d*. a week.

Date of marriage.—May 1905. Age when married, 23.

Place where married.—Registry office.

Reason for requiring relief.—Gave wife wages on 8th (18*s.* 10*d.*); on Saturday, 9th October 1909, when returned from work wife gone. Wife wrote to works and stated he had agreed to pay 9*s.* a week. No agreement had been entered into, and husband had no idea that wife was leaving him. Never assaulted wife, and had always paid her his full wages for the household. Three children taken away by mother. No order for payment from Guardians (*see* letter). Mother-in-law living with applicant is real cause of dispute.

Solicitor's initials.—C. G.

M. No. 71.

17th November 1909.

Name.—A. T., wife of T. T.

Occupation of husband.—Labourer.

Age when married.—17.

Nature of relief required.—Advice as to maintenance.

Reason for requiring relief.—Applicant's husband had struck her and left her in consequence of her inability to keep out of debt. He allowed her 19*s.* per week. She obtained order for separation, but he returned before hearing and have lived together satisfactorily since on 1*l.* a week.

Solicitor's observations.—Separation order easily obtained, but not taken advantage of. Early marriage case.

Solicitor's initials.—S. A. S.

M. No. 72.

20th November 1909.

Name.—M. E. V., wife of J. V.

Occupation of applicant.—Charing.

Husband.—Living apart.

Date of marriage.—August 1895. Age when married, 23.

Place where married.—Church of England.

Reason for requiring relief.—Husband left applicant, who will not resume cohabitation on account of assaults committed upon her. Husband refused to pay any sum towards maintenance of applicant and three children, eldest aged 12 years and youngest 3 years.

Solicitor's observations.—Informed applicant that no order against husband would be made if she declined to resume cohabitation, as he was out of work, earning no wages, but could earn 35*s.* per week.

Solicitor's initials.—J. B. G.

M. No. 73.

20th November 1909.

Name.—A. W.

Occupation.—Tailor's machinist.

Date of marriage.—May 1907. Age when married, 20.

Place where married.—Synagogue.

Nature of relief required.—As to relief against order made by magistrates.

Reason for requiring relief.—Order made against applicant by magistrates on wife's summons for payment of 5*s.* per week, which is second summons. First order made was for 7*s.* 6*d.* Applicant declines to resume cohabitation on account of wife's filthy habits.

Solicitor's observations. — Advised applicant to continue payments, otherwise warrant would be granted against him.

Solicitor's initials.—J. B. G.

M. No. 74.

20th November 1909.

Name.—G. W.

Occupation of applicant.—Labourer.

Date of marriage.—May 1906. Age when married, *39.*

Place where married.—Church of England.

Nature of relief required. — Against applicant *ration order.*

Reason for requiring relief.—Desertion.

Solicitor's initials.—F. B.

M. No. 75.

15th November 1909.

Name.—M. W., wife of J. W.

Date of marriage.—About Christmas, 1894. Age when married, 29.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Husband heavy drinker and very violent and abusive. Struck applicant frequently. Husband already fined for assaulting applicant. Family of six; eldest 14; very abusive to them.

Solicitor's observations.—No evidence of misconduct; no desertion. Proper case for separation.

Solicitor's initials.—W. H. S.

M. No. 76.

19th November 1909.

Name.—H. W., wife of J. W. W.

Occupation of husband.—Employed by firm of grocers.

Husband.—Living apart.

Date of marriage.—September 1905. Age when married, 22 years.

Place where married.—Church of England.

Nature of relief required.—Maintenance.

Reason for requiring relief. — Husband deserted applicant, 12th October 1908, on account of applicant complaining of his not working. No assault. Summons applied for and order made by magistrates on the 29th June 1909, for payment of maintenance at the rate of 5*s.* per week. Husband in arrear with payment. Warrant granted against husband for arrears of maintenance, and served 14 days' imprisonment.

Solicitor's observations.—Husband living with his mother. No children. Advised applicant to apply to Court for further warrant for amount of arrears.

Solicitor's initials.—J. B. G.

M. No. 77.

17th November 1909.

Name.—E. W., wife of E. W.

Occupation of husband.—Iron turner.

Husband.—Living apart.

Date of marriage.—August 1908. Age when married, 24, husband, 28.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Desertion. Magistrates gave husband a warning, and she arranged to give him a further trial and is now living with him and getting on all right.

Solicitor's observations.—This is a case where the magistrates have successfully acted as peacemakers, a course frequently attempted with varying success in the case of young married couples.

Solicitor's initials.—E. Y.

M. No. 78.

17th November 1909.

Name.—A. W., wife of R. W.

Occupation of husband.—Porter.

Husband.—Living apart.

Date of marriage. — April 1900. Age when married, 19.

Place where married.—Church of England.

Nature of relief required.—Separation order and maintenance.

Reason for requiring relief. — Husband deserted applicant four years ago. Prior thereto assaulted her and threatened to take her life, and said he would put knife through her. Husband not paid any maintenance since leaving applicant. Husband met applicant in street since desertion (last Whit-week), and without any provocation or cause kicked her in back and sprained her arm. Summons taken out, and magistrates ordered him one month's imprisonment. No order for maintenance being made. Applicant receiving no maintenance from husband. No children.

Solicitor's initials.—J. B. G.

M. No. 79.

17th November 1909.

Name.—F. W., wife of W. W.
Occupation of husband.—Clogger.
Husband.—Living apart.
Date of marriage.—1907. Age when married, 24.
Nature of relief required.—Summons for desertion.
Reason for requiring relief.—Husband had left her several times and gone out of the country. Unable to find exact whereabouts. Applicant was in service and now living with parents, who will, however, be unable to keep her.
Solicitor's observations.—Unable to obtain separation order or payment of maintenance in consequence of husband's absence from the country.
Solicitor's initials.—S. A. S.

M. No. 80.

29th November 1909.

Name.—A. B.
Occupation of applicant.—Labourer.
Date of marriage.—November 1893. Age when married, 24; wife's age, 21.
Place where married.—Registry Office.
Reason for requiring relief.—Wife deserted applicant and is living with her people.
Solicitor's initials.—H. G. W.

M. No. 81.

20th November 1909.

Name.—S. H., wife of J. H.
Occupation of husband.—Screw and bolt fitter.
Nature of relief required.—Separation.
Reason for requiring relief.—Cruelty.
Solicitor's observations.—Since applicant's attendance matters have been amicably settled and the parties are living together again.
Solicitor's initials.—H. G. W.

M. No. 82.

13th November 1909.

Name.—M. E. B., wife of H. J. W. B.
Occupation of husband.—Labourer.
Husband.—Living apart.
Nature of relief required.—Separation.
Reason for requiring relief.—Desertion
Solicitor's observations.—Applicant cannot obtain summons, because she does not know husband's address although she knows where he works.
Solicitor's initials.—H. G. W.

M. No. 83.

13th November 1909.

Name.—J. F.
Occupation.—Labourer.
Nature of relief required.—Separation order.
Reason for requiring relief.—Wife habitual drunkard.
Solicitor's initials.—H. G. W.

M. No. 84.

13th November 1909.

Name.—M. G., wife of M. G.
Occupation of husband.—Fireman.
Husband.—Living apart.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband cruel.
Solicitor's observations.—Order 6s. per week. Payments being made.
Solicitor's initials.—C. G.

M. No. 85.

13th November 1909.

Name.—E. R., wife of J. R.
Occupation of husband—Case Dealer.
Husband.—Living apart.
Nature of relief required.—Increase of order for maintenance.
Solicitor's observations.—Applicant has not taken any steps.
Solicitor's initials.—C. G.

M. No. 86.

Name.—A. T. 20th November 1909.
Occupation.—Packer.
Date of Marriage.—July 1906. Age when married, 22; wife's age 19.
Place where married.—Registry Office.
Nature of relief required. — Separation (wife's application).
Solicitor's observations.—Separation granted but parties are living together again.
Solicitor's initials.—H. G. W.

M. No. 87.

6th December 1909.

Name.—G. A., wife of A. G. A.
Occupation of husband.—Cabinet maker.
Husband.—Living apart.
Age when married.—18.
Nature of relief required.—Custody of children.
Reason for requiring relief.—Husband living with another woman. Applicant living with another man, by whom she has had three children. Children of marriage, three. Husband habitually cruel.
Solicitor's observations.—This note is inserted as an example of the crude ideas of morality. Applicant told me that one day her husband brought another man, and told her that this man would look after her for the future, and that he was going. Applicant says that this man has been very kind to her, and also to all the children, and that she "could not wish for a better husband."
Solicitor's initials.—H. G. W.

M. No. 88.

6th December 1909.

Name.—M. D., wife of I. D.
Occupation of husband.—Labourer.
Husband.—In prison.
Date of marriage.—October 1903. Age when married, 17.
Place where married.—Church of England.
Nature of relief required.—Separation order and maintenance.
Reason for requiring relief.—Husband at present serving three months for neglect of wife and family consisting of two children.
Solicitor's observations.—Husband spent all his money in betting on horses.
Solicitor's initials.—W. B. F.

M. No. 89.

6th December 1909.

Name.—A. H., wife of T. H.
Occupation of husband.—Labourer.
Husband.—Living apart.
Date of marriage.—January 1906. Age when married, 16.
Place where married.—Registry Office.
Nature of relief required.—Separation.
Reason for requiring relief. Failure to supply sufficient maintenance. Cruelty, compelling wife to have connection with him notwithstanding that she is enciente.
Solicitor's observations.—Since consulted the matter has been in the hands of the Manchester City League of Help, who have brought the parties together again.
Solicitor's initials.—H. G. W.

M. No. 90.

20th December 1909.

Name.—E. A. W., wife of W. W.
Occupation of husband.—Checker on Railway.
Husband.—Living apart.
Date of marriage. — April 1909. Age when married, 23.
Place where married.—Registry Office.
Nature of relief required.—Maintenance for self and infant daughter.
Reason for requiring relief.—Husband has deserted her.
Solicitor's observations.—Date of desertion, 10th September 1909. Payment 6s. a week regular. Wife estimates wages at 25s. a week. Letter written by this department claiming 10s. a week, to which reply received.
Solicitor's initials.—W. I

APPENDIX XII.

A.

Replies by Legal Aid Societies of various States of the United States.

TABLE OF CONTENTS.

Name.	Cities.	No.
Mr. Henry James, jun. -	Boston	(1)
Miss A. L. Higgins -	Boston	(2)
Mr. Guy M. Blake - -	Chicago	(3)
Mr. Leonard McGee -	New York	(4)
Mr. Rupert S. Holland -	Philadelphia	(5)
Mr. H. V. Blaxter - -	Pittsburgh	(6)

Copy Letter by Mr. J. Arthur Barratt.

DEAR MR. GATES, 17th March 1910.

I HAVE been asked to give evidence before the Royal Commission appointed to consider the reform of the Divorce Laws in England.

One of the abuses to be dealt with is the fact that poor people are unable to get divorce here because of the great cost to them, amounting at least to 100 dollars to 150 dollars. The result is that they apply for mere separation orders, and then live apart without the possibility of contracting a valid marriage. Of course this leads to the greatest difficulties and dangers.

As you have had so much experience in giving legal advice to the poor, I should much appreciate it if you can let me know what is the average cost in your experience of procuring a divorce for poor people. Do you know of any cases where such persons have been prevented from procuring a divorce by reason of the expense in doing so?

Do you find that there is any extensive recourse to the Divorce Courts by the poor in New York?

I should also like to get the fees of the legal aid societies in other parts of the United States, in say six of the chief cities, and I have accordingly enclosed letters ready to be addressed to such societies. Might I ask you to forward the same for me, and thus save time as I need the answers at an early date.

Thanking you in advance for any trouble you may take.

Believe me,
Yours, &c.,

Merrill E. Gates, jun., Esq.,
Legal Aid Society,
239, Broadway,
New York City, U.S.A.

DEAR SIR, 19th March 1910.

I HAVE been asked to give evidence before a Royal Commission of the House of Lords on Divorce Law Reform. One of the questions before the Commission is the provision for divorce at less cost than at present, so that the poor may have equal facilities with the rich for divorce if necessary. One of the evils here is that divorce is so expensive that the poor cannot afford it. They consequently simply get separation orders, live apart, and then contract relations with someone else, live as man and wife, and bring up another family.

From your great experience amongst the poor will you kindly say whether any such state of fact exists amongst them in your neighbourhood, and also what in your opinion is the average cost of a divorce for poor people.

Do you find divorce increasing amongst the poor?

I shall be pleased to put your replies before the Commission, and shall be glad of an answer to this letter at your early convenience. I shall also be glad of any suggestion as to reform you may have in mind.

Yours, &c.,

The Legal Aid Society of the City of Boston, Chicago, St. Louis, New Orleans, San Francisco, Philadelphia.

P.S.—Forwarded by Merrill E. Gates, jun., Esq., Secretary of the Legal Aid Society of New York.

(1.)

BOSTON LEGAL AID SOCIETY (INCORPORATED).

Boston, Massachusetts,
DEAR SIR, 20th April 1910.

YOUR inquiry dated 19th March forwarded by the New York Legal Aid Society reached this office a few days ago. I have obtained some further information than we could give ourselves, and hope that it may be of assistance to you.

In order to answer your questions satisfactorily, it is necessary to explain, first, that in Massachusetts divorces may be obtained for any one of the following causes:—(1) adultery; (2) impotency; (3) extreme cruelty or cruel and abusive treatment (an unfortunate and useless distinction), or gross and cruel neglect to support the wife; (4) utter desertion for three years; (5) gross and confirmed habits of intoxication or use of drugs; (6) conviction and sentence to hard labour for five years or more. Further, the probate courts are empowered to find as a fact that the woman is living apart from her husband for justifiable cause, and upon the foundation of such finding to order the husband to impose no restraint upon his wife, to make payments for her support or his children's, to give her the custody of the children. Failure to obey such an order is punished as contempt. The police courts treat non-support as a criminal offence, usually putting the husband on probation, on conviction, with the consequence that he has to make regular payments for the term of his probation under the direction of the probation officer.

Cost of Divorce.—It is occasionally possible for a poor person to obtain counsel in an uncontested divorce case where the grounds for divorce are easily proved (*e.g.*, desertion or imprisonment for five years) for as little as 25 dollars. The usual minimum charge in this Commonwealth seems to be 50 dollars. This is a not uncommon charge, however. The court costs, being included in such charges, amount to 3 dollars for entering the libel and from 1.50 dollar to 5 dollars or 6 dollars for serving it or publishing an advertisement. Witness fees vary. You will bear in mind in this connexion that the distinction between solicitor and barrister does not exist in this country, and for this reason our procedure is less expensive than English procedure. Divorce cases are heard by a single justice sitting without jury. The expense is undoubtedly

often deterrent, but in many of the larger cities Legal Aid Societies exist which take up meritorious cases of the greatest hardship. The Boston Society proceeds only in these extreme cases, making it a general rule not to do divorce work on charitable terms.

Results of inability to pay for Divorce.—Probably a moderate number of men simply desert their families and subsequently contract irregular relations with other women, but in our experience it has appeared that the expense of procedure is a frequent or principal cause of such behaviour. On the other hand, a woman who has children and who is deserted or maltreated by her husband is often in the worst situation. But if she is a Catholic (and a good proportion of the poor in the cities of the State are now Catholic) she probably does not want a divorce any way. This office has seen no evidence, however, that women under such conditions are often forced by economic necessity into immoral alliances with other men. If a woman has children and her husband has maltreated her, her usual desire is to establish a home alone with her children. For this she often needs legal protection. Without being divorced she can obtain a separate support decree from the Probate Court, often for an expense not exceeding 15 dollars to 25 dollars, there being in such proceedings no court costs except possible witness fees, and these are often unnecessary. Legal work at this rate is, of course, more or less charitable on the attorney's part. The Legal Aid Society prosecutes such cases for nothing or a nominal charge when the circumstances call for such action. But I have been impressed by the frequency with which attorneys undertake such petty cases when they are meritorious for a very small sum. One quarter to one third of the Boston Legal Aid Society's cases have been such cases, and the Society considers that it does no more useful and important work than in attending them.

I realize, however, that only the more worthy and deserving women would come to an institution like the Legal Aid Society; and, therefore, in order to supplement the, perhaps, too limited experience of this office, I have asked officers of the two largest charitable organizations in Boston, which annually enter and investigate hundreds of homes among the very poor irrespective of the virtue and deserts of the visited, for their opinions. I should consider their opinions as the most trustworthy obtainable in the city. The answers confirm my impressions, and I enclosed one received in writing.

As to the increase of divorce.—There are public statistics about the increase of divorce, but I do not think they discriminate between divorce among the poor and the rich. It is my impression that during the last ten years there has been no very marked increase in divorce among the very poor. Among the rural population in certain parts of the country, New England for instance, there has probably been a very considerable increase. This, however, is due to social changes, which, I believe, have little to do with any recent change of the law, My experience with these cases among the city poor in Boston is based on 400 to 500 cases in which I have examined the papers or talked with the witnesses myself during the last two years. This experience has led me to believe heartily in the importance and value of some such proceedings as our separate support proceedings in the Probate Court. These are cheap, speedy, and of great benefit to poor but honest women who have children whom they wish to bring up undisturbed by brutal and drunken husbands. Such are the clients on whom the marriage tie, if it cannot be dissolved or relaxed, weighs most heavily, and I am also much impressed by the fact that it is not for the wife's interest alone, but also greatly for the interest of the children that homes should be easily protected from the influence and bad example of drunken and brutal fathers and husbands. I have been impressed by the fact that it is very seldom that a woman in this situation really needs a divorce. She does not want to have another man in the house. It is true that the husband is probably irregular in his habits when shut out of his own home, but also it is my impression that his irregularities outside of his own home are not of the kind that increase the population, whether he is divorced or not.

Occasionally, although a woman does not wish to marry again, her husband is of so unruly and vindictive a type that a separate support order does not protect her from his incursions into her home and his various interferences with her. In such cases the possibility of securing a divorce for her cheaply is of great value to her and her children. Even the most violent and spiteful husband seems to acquiesce in the finality of a divorce.

Cost of living.—The following facts may help you in understanding the bearing of some of the information. above. The city of Boston pays 2.25 dollars a day for unskilled labour. The expense of living is such that the judges appear generally to believe that a man separated from his family cannot be expected to keep himself in such health that he can work regularly unless he has 8 dollars a week. Therefore separate support orders and divorce proceedings do not result in payments to the wife unless the husband is earning more than 8 dollars or 9 dollars a week. A woman being the better manager can live somewhat more cheaply—observe the last paragraph in the letter from the Associated Charities.

Yours, &c.,
HENRY JAMES, jun.

J. Arthur Barratt, Esq.,
3, Temple Garden, Temple,
London, England.

(2.)

THE ASSOCIATED CHARITIES OF BOSTON.

Boston,
8th April 1910.

MY DEAR MR. JAMES,

I TALKED with the secretaries yesterday. There was a large attendance, covering the whole city, and only two instances were cited where we know of a man and woman living together illegally, because, owing to poverty, they could not get a divorce, and in one of these it is doubtful if that is the reason. In my own personal experience with poor families I can only recall one instance, and when I offered to help the woman get a divorce in order to legalise the present situation the couple disappeared.

In answer to your last query, roughly speaking, an able-bodied woman can usually earn enough to support herself and two children. When it comes to a definite statement of what she should be allowed in order to do this without working for compensation on her part it is tremendously difficult, as you can see, depending on previous spending, age of the children, health, &c. With two small children I should think a minimum would be 6 dollars a week, and the mother would have to supplement that with small earnings, or live with friends in a co-operative sharing of expenses. Please use this letter in any way that seems wise to you.

Yours, &c.,
ALICE L. HIGGINS.

Mr. Henry James, jun.,
84, State Street,
Boston, Massachusetts.

(3.)

LEGAL AID SOCIETY OF CHICAGO.

Chicago, Illinois,
4th April 1910.

DEAR SIR,

IN answer to your inquiry with regard to the question of divorce among poor persons in this community, I would say that there is a provision in the statutes of the State of Illinois which enables poor persons to start what is called a "pauper suit" for divorce. No advance payment of costs is necessary, but the attorney is required to make affidavit to the effect that he is receiving nothing for his services in prosecuting the suit, and that he expects to receive nothing. The litigant must sign an affidavit stating that he has no money to advance for the payment of costs and promising to pay the court costs out of the first money obtained from the defendant in the suit, if any is obtained. Upon such a showing the court will allow a pauper's suit to be started, and proceedings can be taken in the usual way toward securing a divorce.

You will see that this provision in the statutes enables poor persons to obtain a divorce almost as readily as rich persons, provided the attorney can be found who will undertake to handle the matter. It very rarely happens that the husband is not earning enough so that he can pay his attorney some small fee; or, if he is a defendant, he can be required by order of the court to pay a small fee to the attorney who is handling the matter for his wife.

There are many lawyers in this city who, through one cause or another, are glad to handle these small matters, so that it may be said that we are hardly confronted with the situation of which you speak in your letter (*i.e.*, poor persons living in adultery because of expense of divorce suit).

The policy of this society with regard to divorce is somewhat conservative. The Board of Directors take the position that a divorce is a luxury. They feel that in almost every case persons seeking divorces should pay for services rendered in securing them. Unless the husband is conducting himself in such a way as to place the wife or children in actual physical danger, or is interfering with the education of the children, the Legal Aid Society will not undertake to secure a divorce. Of course where there are such cases and we do undertake to secure a divorce, no charge whatever is made.

As to your inquiry about whether divorce is increasing amongst the poor, I would answer that there has been no apparent increase in this community. I believe that the figures show an increase of divorce amongst all classes of people within the last few years, but I do not believe that divorces, or the conditions which bring about the necessity for divorces, are increasing; especially amongst the poor.

Yours, &c.,

GUY M. BLAKE,
Attorney for the
Legal Aid Society
of Chicago.

Mr. J. Arthur Barratt,
3, Temple Gardens,
London, England.

(4.)

THE LEGAL AID SOCIETY.

New York,
26th March 1910.

MY DEAR Mr. BARRATT,

YOUR letter of 17th March, addressed to Mr. Merrill E. Gates, has been forwarded to me. Mr. Gates resigned as Attorney-in-Chief of the Legal Aid Society on the 1st of January 1910, and I was appointed his successor. In regard to obtaining evidence to present before the Royal Commission on the question of Divorce Law, permit me to state that I will be very glad to assist you in every way possible and have to-day mailed to the various Legal Aid Societies throughout the United States the letters which you enclosed. I will forward you a brief report on the question the early part of next week and will mail you, as the same are received, the various articles from the other Legal Aid Societies in America.

Yours, &c.,

LEONARD MCGEE,
Attorney for the
Legal Aid Society.

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

THE LEGAL AID SOCIETY.

New York,
13th April 1910.

MY DEAR Mr. BARRATT,

I AM enclosing you herewith articles I have received from the Chicago Legal Aid Society, the Legal Aid Society of Pittsburg, the Legal Aid Society of Philadelphia, and one I have prepared on the question of Divorce. I trust the enclosed will serve their purposes, and when I receive the articles from the other societies I have written to, I will be very glad to forward the same to you.

Yours, &c.,

LEONARD MCGEE,
Attorney for the
Legal Aid Society.

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

THE LEGAL AID SOCIETY,

New York,
13th April 1910.

MY DEAR SIR,

IN compliance with your request of 17th March, I will outline briefly the law and practice in divorce, annulment, and separation proceedings in this State, and give you such statistics and figures on cost as I have.

Divorces may be obtained in this State only on the ground of adultery. Separation may be obtained for cruel and inhuman treatment, drunkenness, abandonment, &c. A marriage may be annulled where one of the parties had a former husband or wife living at the time of the marriage, where one of the parties to the marriage was under the age of 18 years, and has not cohabited with the other party after attaining that age, or where the marriage was contracted through fraud or duress, &c.

These actions are commenced by either the personal or the substituted service upon the defendant of a summons, or a summons and complaint. If the service is made by substitution, that is, by publishing the summons in two newspapers for six consecutive weeks, the cost runs from 20 dollars to 30 dollars for that item alone. This is not a very satisfactory way of proceeding, however, owing to the strictness required in proving service, and the leeway allowed in opening defaults. The great majority of cases are commenced by personal service of a summons on the defendant, and where this is done the person serving the summons must be examined as to the service in open court.

If the defendant appears and defends the case, it is possible for either of the parties to move for the appointment of a referee to take the testimony. This is an expensive proceeding, as the referee's fees range over 10 dollars for every hearing. As the party securing the reference must pay the cost of such reference, no one would make such an application unless he or she had the means to do so. Where no reference is ordered, the case is tried in the Supreme Court, Special Term, which is the equity side of the Court, before a justice or before a justice and a jury, at the election of the parties. If the case is undefended, an inquest is taken by the justice sitting in Special Term, and as strict proof is required as though the case were defended.

After the testimony in either defended or undefended cases has been taken in open court, the stenographer's minutes are submitted to the justice together with specific findings of fact and law, and a proposed interlocutory decree, except in a separation suit, in which case final judgment may be at once entered. The procedure slightly differs where there is a jury, which decides these specific questions of fact presented, and the interlocutory decree is entered on their findings. This interlocutory decree, the findings, and testimony are then filed in the county clerk's office, and final judgment is entered three months later.

In New York County there is a special calendar of undefended divorce, separation, and annulment cases which is called every Wednesday, and inquests taken. In this way it is possible to bring a case to hearing within a month or six weeks after it has been placed on the calendar. A defended case cannot be brought on so quickly owing to the crowded condition of the calendar in this county, and it sometimes takes eight months or a year before the case is reached for trial.

Except where a reference is ordered or service by publication is required, the chief expense in these cases is the cost of the stenographer's minutes. Where the case is defended, there is no way to tell what this cost will be, as it depends entirely on the amount of testimony produced. In this connexion I can only say that I tried a case a few weeks ago, in which nine witnesses testified, the trial lasting approximately three hours, and the costs of the minutes amounting to 25 dollars. That I believe can be taken as a fair sample of the class of defended cases in which this Society appears. According to the statistics that were compiled in this office for work done in divorce, separation, and annulment cases handled between 1st January 1907 and 20th November 1909, the total average cost in 16 undefended cases was 5.86 dollars. In similar cases concluded between 29th November

1909 and the present date, the average cost in seven undefended cases was 6.71 dollars. These items are made up of a calendar fee of 3 dollars, a trial fee of 1 dollar, the cost of the stenographer's minutes, and 50 cents for entering the final judgment. Service in these cases was made by some friend of the plaintiff, and consequently there was no expense in that connexion.

Statistics furnished me by the Clerk of the Supreme Court in New York County shows that there were 646 undefended cases disposed of in 1909. From January 1909 to April 1910 there have been either disposed of or there are still waiting trial 213 defended divorces, 183 defended separations, and 30 defended annulments. It is impossible to tell from these statistics, and I believe any statistics on the subject are very unreliable, whether divorce is on the increase in this State or not. My own personal observation made possible through frequent attendance at the Special Term of the Court, where such cases are disposed of, leads me to believe that a large proportion of the parties seeking relief in such cases are people of very moderate means. In the ordinary case I doubt whether it is often possible to get an attorney of any responsibility to handle a case for less than 100 dollars. The average fee will range from 100 dollars to 200 dollars.

In conclusion I wish to say that the laws of New York offer the possibility of relief to even the poorest, although the grounds for which an absolute divorce may be obtained seem to me unduly restricted.

Yours, &c.,

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

LEONARD MCGEE,
Attorney for the
Legal Aid Society.

THE LEGAL AID SOCIETY.

New York,
5th May 1910.

DEAR SIR,

IN reply to your inquiry of April 25th, in reference to the proportion of poor persons desiring divorce, who are living with others improperly without marrying, I can safely say that my experience here and the information I receive from several charity workers that I know, leads me to believe that this proportion is very small. As I set forth in my previous letter, the actual cost of divorce in New York is not much, and ordinarily within reach of most persons. You will remember, however, that divorce is allowed in New York only on a ground of adultery, and for that reason there are many persons living in adultery because it is impossible to secure a divorce. This, however, is due to the stringency of the law, and not to any question of cost.

Trusting that this meets your question,

I am,
Very truly yours,
LEONARD MCGEE,
Attorney for the Legal Aid Society.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(5.)

LEGAL AID SOCIETY OF PHILADELPHIA.

Philadelphia,
29th March 1910.

DEAR SIR,

I HAVE received your letter of 26th March with enclosure of letter of J. Arthur Barratt, Esq., of London. I can answer the questions asked in brief form.

We say the average cost of obtaining a divorce is one hundred dollars (100 dollars). This does not include counsel fees. Under Pennsylvania law fifty dollars (50 dollars) has to be deposited in court at the time the application for a master's appointment is made, and the master is entitled to claim the 50 dollars as a fee for the first meeting, and to charge ten dollars (10 dollars) for each subsequent meeting. The other costs are 2.50 dollars at the time the suit is started and a similar amount to the sheriff for the subpœna to be personally served. The same fee is paid the sheriff for serving the notice of the final decree, and a fee of ten dollars (10 dollars) is paid to the clerk of the court when the decree is granted. In cases where the sheriff cannot make personal service the law requires advertising both of the original subpœna and of the rule for the final decree. The cost of this advertising comes to between 10 dollars and 20 dollars, depending on the newspapers' charges.

We, therefore, generally state that the costs will come to 100 dollars, although in some cases it may be slightly less and in some will exceed this amount. It is undoubtedly true that the costs of obtaining a divorce do prevent many poor people from securing such relief. I cannot say from my own experience that this happens in a great many cases, and am inclined to believe that where the injured person is really desirous of obtaining a divorce he or she can find the means to do so. I believe that divorce is increasing among all classes of people, the poor as well as the rich. I have no figures to show this, but draw the conclusion from the cases which have come to the attention of our Society.

I trust this answers the questions fully enough. Should you wish any more detailed information we would be very glad to furnish it to you.

Yours, &c.,

Leonard McGee, Esq.,
Legal Aid Society
of New York,
239, Broadway,
New York City.

RUPERT S. HOLLAND.

(6.)

LEGAL AID SOCIETY OF PITTSBURGH.

Pittsburgh, Pennsylvania,
8th April 1910.

DEAR SIR,

I BEG to acknowledge receipt of your letter of 19th March 1910, concerning the question of divorce among the poor, asking as to its cost and whether it is increasing. In reply I beg to submit the following report:—

Under the laws of the State of Pennsylvania absolute divorce is permitted for impotence, bigamy, adultery, desertion, cruelty, and conviction for forgery or other infamous crime. Under our method of procedure such cases may be tried in one of three ways, depending on the choice of the parties, with the right always to demand a trial by jury.

1st. By the Court sitting as a Chancellor.

2nd. By the Court and jury.

3rd. By a master appointed by the Court, who hears the evidence in private sittings, and submits a report to the Court.

An average of the costs taxed in a considerable number of cases shows the average to be about as follows:—

	Dollars.
Before the Court sitting as a Chancellor	18.01
In cases where a master is appointed	47.59
In cases of jury trial	25.00

The average charge made by an attorney for obtaining a divorce is, so far as I can judge, in the neighbourhood of 100 dollars. Of course this latter figure varies, and I do not consider that, apart from the Court costs, it would be impossible for a poor person to find an attorney who would take a divorce case and charge a fee in proportion to the means of the client.

This Society does not handle divorce cases, and consequently has not had a great deal of experience along this line. Many of the persons who have applied to the Society for assistance have discussed with our attorney the question of divorce, and many of them have said they cannot afford to apply for a divorce, but just as many have said that they would save up their money for that purpose. My personal opinion is that the cost of divorce in the State of Pennsylvania is as cheap as it should be made, and that any further material cheapening of the process would result in detriment to the community at large in encouraging hasty applications for divorce.

I am unable to answer your question as to whether the cost of divorce compels poor people to live in adultery. This question, however, I have had up with several social workers in Pittsburgh, and two of the most experienced have advised me that it is their opinion that a considerable number of poor persons are living in open adultery because they cannot afford the luxury of a divorce.

As to your second question, I think it is a well-established fact that divorce has increased greatly in the past decade in the United States generally. Whether the ratio of increase has been higher among the poor than the well-to-do I am unable to say definitely. It is my opinion, however, from general observation, that it has been about stationary with the lower classes and has increased largely with the well-to-do. This, however, may be an error resulting from the greater notoriety attached to the divorces of the well-to-do as opposed to those of the poor. I would therefore suggest that you do not place reliance upon this last observation.

Trusting this information may be of assistance to you in appearing before the Royal Commissioners of the House of Lords, and assuring you of our desire to assist you in any other way we can.

Yours, &c.,

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

H. V. BLAXTER,
Secretary to the
Legal Aid Society.

P.S.—I, perhaps, should add that the costs shown above are only those taxed by the county, and do not include the witness fee bill or other incidental expenses, which vary with the particular case, and might often double or treble the above amounts.

Yours, &c.,
H. V. B.

B.

Replies by American Jurists to Questions submitted by Mr. J. Arthur Barratt.

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Mr. John E. Mitchell	President Mobile Bar Association	Alabama	(1)
Mr. Curtis H. Lindley	President Bar Association of San Francisco	California	(2)
Mr. Henry Stoddard	Formerly Judge of the Superior Court	Connecticut	(3)
Mr. Alex. W. Smith	President Atlanta Bar Association	Georgia	(4)
Hon. George A. Dupuy	Chancellor of the Superior Court of Cook County	Illinois (Chicago).	(5)
Mr. Jos. H. Defrees	President of Chicago Bar Association	,,	(6)
Mr. Justice Walker	Judge of Circuit Court of Cook County	,,	(7)
Mr. Justice Windes	Judge of Circuit Court of Chicago	Illinois	(8)
Mr. Charles Martindale	President of the Indianapolis Bar Association	Indiana	(9)
Mr. E. H. Randolph	President Louisiana Bar Association	Louisiana	(10)
Mr. Justice S. Putnam	United States Circuit Judge	Maine	(11)
Mr. Moorfield Storey	President Boston Bar Association	Massachusetts	(12)
Mr. Pierce Butler	Formerly President of Bar Association of State of Minnesota.	Minnesota	(13)
Mr. Lafayette French	President Minnesota (Austin) State Bar Association	Minnesota	(14)
Mr. Charlton A. Alexander	President of the Bar Association of Jackson, Mississippi.	Mississipi (Jackson).	(15)
Mr. Daniel G. Taylor	President of the Bar Association of St. Louis	Missouri	(16)
Mr. C. L. Harwood	Counsellor at Law	Nevada	(17)
Mr. Edward D. Duffield	President of the Bar Association of Newark, New Jersey.	New Jersey	(18)
Mr. Justice Allen	District Judge, Fourth Judicial District, North Dakota.	North Dakota	(19)
Mr. James Lawrence	President Bar Association of Cleveland, Ohio	Ohio	(20)
Mr. Walter George Smith	Chairman of Resolutions Committee of the United States National Congress on Uniform Divorce Laws.	Pennsylvania	(21)
Mr. Justice Carland	United States District Judge for South Dakota	South Dakota	(22)
Mr. Hugh M. Tate	Messrs. Lucky, Fowler, Andrews and Tate	Tennessee	(23)
Mr. Thomas T. Holloway	President, Dallas Bar Association	Texas	(24)
Mr. Charles Baldwin	President, Utah Bar Association	Utah	(25)
Mr. B. Rand Wellford	President of Bar Association of Richmond, Virginia	Virginia	(26)
,, ,, ,,	,, ,, ,, ,,	,,	—
Mr. Harold Preston	President of Seattle Bar Association	Washington	(27)
Mr. George D. Van Dyke	President of Milwaukee, Wisconsin, Bar Association	Wisconsin	(28)

Questions submitted by Mr. Barratt.

DIVORCE.

1. What is the state of public opinion in your neighbourhood—

(*a*) As to whether the existing causes for divorce should be changed in any way.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie.

(*c*) As to its tendency to lead to hasty marriages.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers.

(*e*) As to the attitude of the community toward citizens who are divorced in the States where so-called "easy divorce" is procured, on their return to your home State.

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means.

(*b*) To a poor person.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?

3. Is the tendency to divorce or separation on the increase or decrease?

4. What courts have jurisdiction to grant divorce? Have your minor or county courts such jurisdiction?

5. Is the divorce decree, when first entered, a final decree, or is it simply interlocutory, to be followed by a final decree after a certain period of time?

6. Is there any public officer in your State having authority to intervene in divorce actions on behalf of the State, or otherwise, to prevent collusion or fraud?

7. Is the husband or the wife more frequently the plaintiff in divorce actions?

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect for the marriage tie in your State?

9. State your views on divorce generally, including any suggestion for reform in your divorce laws.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?

11. Do clergymen refuse to marry divorced persons?

(In all the above questions suits for nullity or separation are to be included under the name "divorce.")

Replies.

(1.)

ALABAMA.

Mobile, Alabama,
12th April 1910.

DEAR SIR,

YOUR favour of 5th March, addressed to the President of our Local Bar Association, was handed me a few days ago, and I take pleasure in replying to your inquiries, although I regret my inability to answer all of them fully. The answers are in the order of the questions.

1.—(*a*) Public opinion in this neighbourhood has not been aroused to an extent which would indicate any general sentiment as to whether the existing causes of divorce should be changed in any way. My own opinion is that the grounds for divorce in this State are proper, but divorces are too often granted on what seems to me to be mere formal proof.

(*b*) The laxity with which divorces are granted undoubtedly tends to disrespect for the marriage tie.

(*c*) The knowledge that a divorce may be easily obtained probably leads, in many instances, to hasty marriages.

(*d*) There is a general sentiment against publishing details of divorce proceedings in the newspapers.

(*e*) Public opinion is sufficiently strong to frown with disfavour upon persons obtaining a divorce in those States where so-called "easy divorce" is procured, but the incident is soon forgotten, and the party does not permanently lose social caste.

2.—(*a*) The average cost of procuring a divorce to a person of moderate means is 75 dollars and (*b*) 40 dollars to a poor person. Proceedings for a divorce are seldom resisted, and when they are the costs are probably double or triple the above figures. The rich, the poor, the high and the low, likewise resort to the divorce courts, but there is probably a larger percentage of divorces among persons of moderate means than among persons of other classes.

3. The tendency to divorce is on the increase.

4. Only superior courts have jurisdiction of divorce proceedings.

5. The divorce decree is final when granted on personal service, except that neither party may marry within sixty days thereafter, and, as a rule, the decree permits only the complainant to marry again, and if the respondent desires to marry again he, or she, must file a petition for such purpose, and, if a man, must show to the court that he is financially able to maintain a family, and that the cause for which the divorce was granted will not likely again occur. When service is had by publication, as for instance, where the respondent is a non-resident, the decree remains in abeyance for twelve months subject in the meantime to be set aside by proof that no notice of the proceedings was actually received.

6. There is no such public office in this State.

7. The majority of proceedings for divorce are instituted by the wife.

8. It is not a fact that citizens of other States frequently resort to the courts of this State for action for divorce. Where the respondent is a non-resident, the other party to the marriage must have been a *bonâ fide* resident of this State for one year next before the filing of the bill. Where the ground for divorce is abandonment by the respondent, the complainant must have been a *bonâ fide* resident of this State for three years next before the filing of the bill.

9. I am in favour of a divorce on any one of the following grounds:—(1) In favour of either party when the other was, at the time of the marriage, physically and incurably incapacitated from entering into the marriage state; (2) adultery; (3) voluntary abandonment from bed and board for two years next preceding the filing of the bill; (4) the commission of the crime against nature; (5) becoming addicted after marriage to habitual drunkenness; (6) in favour of the husband when the wife was pregnant at the time of marriage, without his knowledge or agency; (7) in favour of the wife when the husband has committed violence on her person, attended with danger to life or health, or when from his conduct there is reasonable apprehension of such violence.

I am not in favour of permitting either party to a divorce proceeding to marry again, except the innocent party who has obtained a divorce on the ground of adultery.

10. Our courts have power to order divorce actions to be heard privately in court, or before a referee, but private proceedings are infrequent.

11. A large number of clergymen refuse to marry divorced persons, and this is especially so in reference to clergymen of the Roman Catholic and Episcopal Churches; except that the Episcopal clergymen, as a rule, do not withhold their sanction to the marriage of the person who has obtained a divorce on the ground of adultery of the other party to the marriage.

Trusting that the above answers will be of some service to you, and assuring you of my desire to render any further assistance in my power, I beg to be,

Yours, &c.,

JNO. E. MITCHELL,
President Mobile Bar Association
(Address merely Mobile, Ala.).

Mr. J. Arthur Barratt,
London, England.

(2.)

CALIFORNIA.

San Francisco,
17th February 1910.

MY DEAR SIR,

RESPONDING to your favour of the 1st instant, asking my responses to a series of questions on the subject of divorce, you will find my replies appended below:—

1.—(*a*) There does not seem to be any popular outcry against the present "liberal" system.

(*b*) Naturally such tendency exists in a large degree.

(*c*) Tendency in this direction not marked.

(*d*) It is inadvisable, but newspapers revel in this class of sensational "news."

(2) The divorced individual is not socially ostracised, unless it is the woman who is divorced for adultery. In certain church circles where divorce is not recognised as being sanctioned by religious dogma, the divorcee is to some extent *persona non grata*.

There is no migration from this State for divorce purposes. It is easy enough here.

2.—(*a*) and (*b*) Statistics are wanting. It depends on magnitude of property interest and question of control of offspring. An average divorce without these elements can be obtained for 125 dollars. Where wealthy people are involved, large fees are paid. Usually property interests are adjusted out of court. Probably the larger proportion of divorces are sought by the last two classes.

3. On the increase, perceptibly.

4. Superior courts, *i.e.*, courts of general jurisdiction, with right of appeal. Our next lower courts are police or municipal, and justices of the peace. They have no divorce jurisdiction.

5. Interlocutory—final follows in a year.

6. No. Legislation of this kind has been attempted but failed.

7. Probably the wife.

8. Outsiders rarely come to this State for this purpose. The interlocutory feature of the decree is deterrent. Nevada is the popular state for "transient" applicants.

9. I have no criticism to make of our divorce laws. I have, however, of their administration. In some courts the law is too loosely administered. There is a

temperamental difficulty, which legislation cannot obviate.

10. Courts have the power, but in later years it has not been exercised to any large degree. Actions are ordinarily heard before a judge in open court. The judge has power to order private hearings or hearings with closed doors, but this power is rarely exercised.

11. Yes. Of certain denominations, *i.e.*, Catholic and Episcopal.

Yours, &c.,
CURTIS H. LINDLEY,
President,
Bar Association of
San Francisco.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(3.)

CONNECTICUT.

New Haven, Connecticut,
25th April 1910.

MY DEAR SIR,

I AM in receipt of a letter or circular from you addressed "H. L. Stoddart," but in view of the fact that the doctrine of reciprocity calls loudly upon me to do anything I can to aid you, I assume that the letter was intended for me, and therefore I hastily answer your various questions stated in your schedule headed "divorce."

As to Question 1, with the subdivisions *a–e* both inclusive, I doubt whether there is any settled public opinion in my "neighbourhood," understanding neighbourhood to mean the State of Connecticut. Such public opinion as there is in this State differs very greatly in different localities. The religious factor is important. We have a very large Roman Catholic population in certain localities. Among the members of most of the other religious communities divorce is resorted to freely; yet, speaking broadly, divorce is unfavourably regarded, and from a social point of view every divorced person assumes the burden of proof and is put upon his or her justification or palliation. I do not think there is any public demand for a change in our divorce laws, nor do I think that public opinion is that our divorce laws lead to hasty marriages. Whether the divorce is obtained in the home State or any other, the "attitude of the community" is directed toward the individual person rather than the fact of divorce. I am inclined to think that public opinion as a whole justifies our divorce laws, and upon the whole they work with fair satisfaction. Doubtless many can be found in our State who will regard any law permitting divorce to be pernicious, and you will find many who think that the divorce law ought to be broadened and divorce made easy, As to all of the above matters we have extremists on both sides.

As to your second question, it is impossible to answer as to the average cost. I do not suppose it can be approximated even. I imagine the minimum cost is probably about 50 dollars.

As to the third question, I think there is no marked tendency to increase or decrease divorce.

As to the fourth question, the Superior Court, which is our Court of highest original jurisdiction. has exclusive jurisdiction in divorce cases.

And, answering Question 5, the final decree is entered at first like any other action.

Answering Question 6, there is no public officer having special authority to intervene in divorce actions on behalf of the State or otherwise, to prevent collusion or fraud, although I apprehend that our State Attorney, so-called, would by virtue of his office have that authority, and I think it probable that it would be his official duty so to do if his attention were called to any such action.

As to Question 7, the wife is more frequently the plaintiff. A very large proportion of divorce actions are brought by the woman.

As to Question 9, I presume my views on divorce are perhaps on a general level with that of the community in general, and stated very broadly, perhaps the following theory is accurate enough for the purpose. I believe that in special cases divorce ought to be granted, but only when the marriage relation is substantially intolerable and not to be endured. I have no suggestion for reform in our divorce laws, and believe that the only real reform lies in the selection of good judges. No judge ought to grant a divorce until he is satisfied that it is for the best interests of the parties concerned that it should be granted, and this without much reference to the alleged cause. In other words, I think that the administration of divorce laws is the principal thing.

As to Question 10, the courts have power to hear the case privately or to send it to a referee or committee, so-called, and this is sometimes done, but usually the cases are heard in open court.

As to Question 11, some clergymen do and some do not refuse to marry divorced persons.

I am, &c.,
HENRY STODDARD.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(4.)

GEORGIA.

ATLANTA BAR ASSOCIATION.

Atlanta, Georgia,
7th May 1910.

DEAR SIR,

I AM in receipt of your favour of the 28th of April advising that you had been called upon to appear before a Committee of the House of Lords on the subject of American divorce laws, and requesting replies to certain questions therein enclosed.

Assuming that you have retained copies of these questions, I will endeavour to answer them by reference to their numbers only.

1.—(*a*) The existing grounds for divorce in this State are (1) intermarriage within the prohibited degrees of relationship; (2) mental incapacity at the time of the marriage; (3) impotency at the time of the marriage; (4) force, menaces, duress or fraud in obtaining the marriage; (5) pregnancy of the wife at the time of the marriage, unknown to the husband; (6) adultery in either of the parties after marriage; (7) desertion continuing three years; (8) conviction of felonies involving moral turpitude; (9) cruel treatment or habitual intoxication (discretionary as to total or partial); (10) (partial) on any ground which was held sufficient in the English courts prior to 4th May 1784.

As each of these grounds is founded in sound reason, I do not believe public opinion desires any change.

(*b*) The existing laws do not tend to a lack of respect for the marriage tie.

(*c*) They do not tend to too hasty marriages.

(*d*) Personally I doubt the advisability of publishing details of divorce actions in the newspapers, but I doubt whether this voices the general sentiment on the subject. The vicious appetite for prurient news will not be likely to be abated in this country until we have progressed much further along lines of ethical culture.

(*e*) There are not a sufficient number of cases referred to herein to form the basis for an attitude of the community on the subject.

2.—(*a*) About 100 dollars. A deposit of 6 dollars is required in all cases to cover minimum court costs. The additional expense includes advertising in case of non-residence and service by publication, and counsel fees.

(*b*) 25 dollars to 50 dollars. The great majority of parties to divorce cases here are poor people or persons of moderate means, a large number of them being negroes.

3. Without any definite statistics on the subject, my observation is that the increase in divorce cases, taking the State as a whole, is not out of proportion to the increase of population.

4. Our superior courts being courts of general jurisdiction, including both equity and common law, are the only courts having jurisdiction in divorce cases. Our minor, or county courts, have no jurisdiction whatever in connection with divorce cases.

5. Our law requires two verdicts rendered at separate terms of the court, with an interval of not less than six months between these terms, before the final decree of divorce is entered. An adverse verdict at the first term, unless excepted to and reversed, would

defeat the action entirely. In like manner a favourable verdict on the first trial followed by an unfavourable one on the second trial, unless the latter is excepted to and reversed, would defeat the action of the plaintiff.

6. In divorce cases proceeding *ex parte* it is the duty of the judge to see that the grounds are legal and sustained by proof, or to appoint the Solicitor-General, or some other attorney of the court, to discharge that duty for him.

7. It would take a very tedious amount of investigation to answer this question definitely. My impression is that the greater number of cases are instituted by the wife against the husband.

8. It is not true that citizens of other States frequently resort to our State for the purpose of bringing actions for divorce, and hence the effect of lessening the respect in our State of the marriage tie is not produced by this cause.

9. Speaking generally, I consider the laws of this State, both as to the ground for divorce and the procedure for granting the same, very admirable and about as well adjusted to the difficult problem as any which could be practically devised and administered.

10. Our superior courts have the power, in any case of seduction or divorce, or other case where the evidence is vulgar or obscene, or relates to the improper acts of the sexes, and tends to debauch the morals of the young, in the discretion of the judge presiding, and on his own motion, or on motion of either of the parties or of their attorneys, to hear and try the case after clearing the court-room of all or any portion of the audience. This power is not often exercised, and there is no opinion of approval or disapproval of the practice. There is no question that the power is rightfully vested, and on proper occasion would be exercised with the entire approval of the public.

11. Whether or not any given clergyman would refuse to marry divorced persons would depend upon the tenets of his own church. I believe the Catholic church declines to recognise civil divorce, and the Episcopal church declines to recognise any except those granted on scriptural grounds. There may be other denominations whose clergymen would have scruples on the subject. As the civil law provides for the performing of the marriage ceremony by a clergyman of any denomination or by our magistrates, there is no embarrassment about obtaining the execution of the licence to marry when once it has been granted.

12. A large percentage of our population consists of the negro race, either of the pure blood or of the various degrees of infusion of the white blood, producing what we term the "mulatto" of varying shades of colour. In even the smallest degree, the negro blood inexorably classes the person with the negro race. In my opinion, the greatest reservoir of material for all trouble about divorces springs from this mixed product. Their state of hopelessness is intensified as the infusion of Caucasian blood in their veins increases. Many of them are endowed with the aspirations of the white race and cursed with the depravity of the negro race, and out of the infractions of the marriage laws which afflict us a very large percentage is caused by this class of our population. Among the full-blooded whites it is exceedingly rare that unlawful cohabitation occurs. Among the blacks and the mulattoes the marriage tie is treated with the utmost indifference. Their only desire, in a great majority of cases, is to avoid the penalty of the criminal laws on the subject, and this they do not always succeed in doing. This view is but one of the many phases of the appalling race question which confronts and overshadows, and sometimes threatens to overwhelm, this section of the United States.

My time is such that it would not be practicable for me to make the necessary investigation to have answered some of your statistical questions. I trust that the foregoing generalities may prove of some service.

Yours, &c.,
ALEX. W. SMITH,
President,
Atlanta Bar Association.

Mr. J. Arthur Barratt,
3, Temple Gardens, Temple,
London, England.

(5.)

ILLINOIS.

REPLIES OF HON. GEO. A. DUPUY, CHANCELLOR OF THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS (THAT IS CHICAGO).

DIVORCE.

1. What is the state of public opinion in your neighbourhood—

(*a*) As to whether the existing causes for divorce should be changed in any way?—I do not believe any change of law is demanded.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie?—I do not think existing laws tend toward lack of respect for marriage.

(*c*) As to its tendency to lead to hasty marriages?—I cannot say that it does.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers?—As between publication and suppression, I favour the former.

(*e*) As to the attitude of your community towards citizens who are divorced in States where so-called "easy divorce" is procured, on their return to your home State?—Very few such cases exist. I have not come in personal contact with any.

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means?—50 to 75 dollars.

(*b*) To a poor person?—35 to 50 dollars.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?—

Poor people are 60 per cent. of the whole.
Rich people are 5 per cent. of the whole.
Others 35 per cent of the whole (estimated).

3. Is the tendency to divorce on the increase or decrease?—Probably on the increase.

7. Is the husband or wife more frequently the plaintiff in divorce actions?—Wife, 78 per cent.; husband, 21 per cent. (Actual statistics in 181 consecutive cases in the Superior Court (Chicago), Cook County, Illinois.)

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect in your State for the marriage tie?—This is not the case in Illinois.

9. State your views on divorce generally, including any suggestions for divorce reform in your divorce laws?—I do not think the divorce laws of Illinois are defective. There is need in default cases that counsel representing the public should participate in the trials to prevent collusion. The absence of such counsel leads to divorces by collusion and to imposition upon the courts. I have presided at the trial of many hundreds of cases, and I do not believe that many divorces are granted when the interests of society demand that they be withheld.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?—Nothing but public hearings in open court.

11. Are private hearings generally approved of?—

12. Do clergyman refuse to marry divorced persons?—Not generally; some Episcopal clergymen do.

(In all the above questions suits for nullity or separation are included under the name "divorce.")

SUPERIOR COURT OF COOK COUNTY, CHICAGO.

GEORGE A. DUPUY, Judge.

In Chambers, 811, Court House, Chicago.
DEAR SIR, Feb. 19th.

YOUR favour of recent date to the President of the Chicago Bar Association was handed by him to me with request that I reply thereto. I take pleasure in complying with his request. He sent it to me as Chancellor of the Superior Court of Cook County,

Illinois (Chicago), because in my regular chancery court work I try about 20 divorce cases per week through the year. I hope this may be of service to you.

Very respectfully,
GEORGE A. DUPOY,
Chief Justice, Superior Court.

To Mr. J. Arthur Barratt,
3, Temple Gardens,
Temple, London.

(6.)

ILLINOIS, CHICAGO,

DIVORCE.

1. What is the state of public opinion in your neighbourhood—

(*a*) As to whether the existing causes for divorce should be changed in any way?—The majority of the public, I think, are satisfied with the causes as they now exist in this State.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie?—That they do not so tend.

(*c*) As to its tendency to lead to hasty marriages?—That they have no such tendency.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers?—Opinion would be very much divided. I think the better reasoning is against publishing details of such actions on the ground that the harm done by such publication is greater than the good accomplished by the deterrent effect upon those contemplating divorce.

(*e*) As to the attitude of your community towards citizens who are divorced in States where so-called "easy divorce" is procured, on their return to your home State?—I have no acquaintance with any such.

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means?—50 to 500 dollars, depending upon whether there is a contest.

(*b*) To a poor person?—25 to 75 dollars.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?—I think by persons of moderate means.

3. Is the tendency to divorce on the increase or decrease?—Large increase.

4. What courts in your State have jurisdiction to grant divorce?—Only our courts of general jurisdiction, by the chancery side thereof.

5. Is the divorce decree when first entered a final decree?—Yes, final.

6. Is there any public officer in your State having authority to intervene in divorce actions on behalf of the State or otherwise, to prevent collusion and fraud?—No public officer is charged with such a duty.

7. Is the husband or wife more frequently the plaintiff in divorce actions?—The wife, but occasionally the fact she is plaintiff is a matter of gallantry on the part of the husband.

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect in your State for the marriage tie?—It is not the fact.

9. State your views on divorce generally, including any suggestions for divorce reform in your divorce laws?—I am in favour of divorce, and think the statutes in this State adequate in that respect.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?—The statute requires default cases to be heard in open court, and in practice all trials are heard in open court.

11. Do clergymen refuse to marry divorced persons?—I know of no clergyman except Roman Catholic and Episcopalians refusing to marry divorced persons.

12. Are private hearings generally approved of?—No.

JOSEPH H. DEFREES,
President of Chicago Bar Association.

(7.)

ILLINOIS, CHICAGO.

Judge WALKER.

DIVORCE.

1. What is the state of public opinion in your neighbourhood—

(*a*) As to whether the existing causes for divorce should be changed in any way?—I do not think public opinion demands any change. By "public opinion" I mean the opinion of the great majority.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie?—That they do not so tend.

(*c*) As to its tendency to lead to hasty marriages?—That they have no such tendency.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers?—Opinion seems divided; there are good reasons why, on grounds of decency, they should be suppressed: there are also good reasons why, as warnings, they should be published.

(*e*) As to the attitude of your community towards citizens who are divorced in States where so-called "easy divorce" is procured, on their return to your home State?—I know of no such citizens.

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means?—About 100 dollars.

(*b*) To a poor person?—About 35 dollars.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?—Of moderate means.

3. Is the tendency to divorce on the increase or decrease?—Largely on the increase, but not so much so as in most of the other States of the U.S. (*see* Federal Census).

7. Is the husband or wife more frequently the plaintiff in divorce actions?—The wife—much more so.

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect in your State for the marriage tie?—It is not the fact.

9. State your views on divorce generally, including any suggestions for divorce reform in your divorce laws?—I assume from Mr. Defrees' letter that this question is to be answered by him personally.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?—Our statute requires default cases to be heard in open court. All trials are held in open court.

11. Are private hearings generally approved of?—No.

12. Do clergyman refuse to marry divorced persons?—None but Roman Catholics and Episcopalians.

(In all the above questions, suits for nullity or separation are included under the name "divorce."

CHARLES M. WALKER,
Judge Circuit Court, Cook Co., Chicago.

(8.)

ILLINOIS, CHICAGO.

Judge WINDES.

DIVORCE.

1. What is the state of public opinion in your neighbourhood—

(*a*) As to whether the existing causes for divorce should be changed in any way?—Cannot answer—have heard no discussion of the subject and very few opinions.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie?—Same answer.

(*c*) As to its tendency to lead to hasty marriages?—Same answer.

(*d*) As to the advisability of publishing details of divorce actions in the newpapers?—Have heard frequent criticisms of such publications,

and think that the opinion is quite general that such details should not be made public.

(*e*) As to the attitude of your community towards citizens who are divorced in States where so-called "easy divorce" is procured, on their return to your home State?—That such citizens are not "desirable."

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means?—50 to 100 dollars when not contested.

(*b*) To a poor person?—10 to 20 dollars when not contested.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?—The last named.

3. Is the tendency to divorce on the increase or decrease?—Increase.

7. Is the husband or wife more frequently the plaintiff in divorce actions?—The wife.

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect in your State for the marriage tie?—Do not know.

9. State your views on divorce generally, including any suggestions for divorce reform in your divorce laws?—I am opposed to divorce generally, and think before one should be granted, the Chancellor should be satisfied beyond all reasonable doubt that the evidence establishes a clear right to relief under the law. Under such practice I would not change the statutory causes for divorce in Illinois.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?—Only the court has power, but to exercise such a power is entirely wrong. There should be no secrets in such cases. They are generally heard in open court.

11. Are private hearings generally approved of?—No.

12. Do clergymen refuse to marry divorced persons?—Do not know.

THOMAS G. WINDES,
Judge of Circuit Court, Chicago.

17th February 1910.

(In all the above questions suits for nullity or separation are included under the name "divorce.")

(9.)

INDIANA.

DIVORCE.

Answers by Charles Martindale, Esq., President of the Indianapolis Bar Association.

1.—(*a*) As to whether existing causes for divorce should be changed in any way, is a matter of some discussion generally mooted in church gatherings and most exhaustively discussed by those who have least knowledge of sociology. My observation is that the trend of opinion is not in favour of either extending or restricting the existing statutory causes for divorce in this State. It appears to me that there is a demand for a stricter application of the law to the facts in each case.

(*b*) As to the existing laws tending or not to a lack of respect for the marriage tie, it is a matter of general observation that there is not as great a respect for the marriage tie throughout the States as in former years, but as to whether the cause of this is the possibility of divorce is a matter upon which there is doubt.

(*c*) The weight of opinion seems to be that the possibility of divorce tends to ill-considered marriages, but it is also a question as to whether if the marriage and divorce laws were made quite strict, illegitimacies would not be largely increased.

(*d*) It is quite the general opinion that the publishing of details of divorce actions in the newspapers is harmful and that many of our social ills are due to what we call "yellow" journalism.

(*e*) The attitude of the community towards citizens who are divorced in the States where so-called "easy divorce' is procured on their return to their home State, is, I dare say, much the same as in the cities of the older States or of Europe. Much depends upon the facts of each case and the conduct of the parties. One or both of the parties is apt to be sent to Coventry for a period of probation, and whether they regain their former social status depends largely upon conduct. It is observable that in suburban communities, where life is simpler, the feeling towards persons who have been divorced is much more severe.

2.—(*a*) The cost of procuring a divorce to a person of moderate means is from 25 dollars to 50 dollars. This means that the taxable court costs are about 15 dollars and the fees of the attorney range from 10 dollars upward.

(*b*) The costs to a poor person are 2 dollars, which is the fee of the sheriff for the service of the writ of summons and whatever fee his attorney may require. We have professional shysters who seek this sort of business at fees of 5 dollars to 10 dollars. The taxable court costs are taxed against the losing party, but if the plaintiff or defendant has no property subject to execution above the exemption, the costs cannot be collected. Divorce is oftener resorted to by the poor because the poor are the larger class, and I think because the conditions of life make a larger demand upon mutual tolerance and also offer greater temptations.

3. Divorce is very greatly on the increase in this State, although there has been no change in the statutory causes of divorce for 37 years. Whether this increase is in a ratio to the increase of population I cannot say.

4. General jurisdiction of civil and criminal nature is in our county courts which bear the title of circuit courts for the reason that the same judge presides over a circuit sometimes composed of more than one county. These are the trial courts for all causes, and the distinctions between actions at law and suits in equity have been abolished by the code of procedure in this State.

In some of the counties of this State we have additional courts of concurrent jurisdiction which are entitled superior courts, and in one or two counties of the State probate jurisdiction is conferred on a probate judge. All of these courts have jurisdiction of petitions for divorce.

5. The decree of divorce is in the first instance a final decree.

6. The public prosecutor or prosecuting attorney, as he is called, has authority to intervene in all divorce actions for the purpose of preventing collusion.

7. Without accurate knowledge of statistics it appears that the wife is more frequently the plaintiff in divorce actions.

8. In this State the petitioner for divorce must make an oath that he has been a *bonâ fide* resident of the State for the last two years previous to the filing of the petition and a *bonâ fide* resident of the county at the time of and for at least six months immediately preceding the filing, which *bonâ fide* residence shall be duly proven by such petitioner to the satisfaction of the court trying the same by at least two witnesses who are resident freeholders and householders of the State. As it is difficult to find two persons who are freeholders and householders who are willing to perjure themselves, it rarely happens that citizens of other States come to this State to bring actions of divorce. There are other States, like Nevada, which are much more inviting.

9. My personal view in relation to divorce is in favour of restricting the causes and requiring strict proof as to the facts.

The causes in this State are adultery, impotency existing at the time of marriage, abandonment for two years, cruel and inhuman treatment, habitual drunkenness, failure of the husband to make reasonable provision for his family for a period of two years, conviction of an infamous crime.

The causes upon which divorce are most frequently granted are adultery, cruel and inhuman treatment, and failure to make provision.

10. Courts in this State have power to order divorce actions to be heard privately in court. Private hearings are not generally approved of, and, although sometimes allowed, are not common.

11. Clergymen, as a rule, do not refuse to marry divorced persons. I have only observed two instances —one by the rector of a Protestant Episcopal Church and the other by a Catholic priest.

Divorce is so inexpensive and easy that poor persons have no need to live with others without ceremony. Such cohabitation is not infrequent, but such relations are sure to be broken up by police interference within a very short time.

(10.)

LOUISIANA.

DEAR SIR, 17th February 1910.

UPON my return to Shreveport I find your letter addressed to the President of the Bar Association of New Orleans, and same was forwarded to me here, and I beg to send you the information desired as accurately as possible under the pressure of the necessity of your having it early in March.

In answer to the first question subdivided under (*a*), (*b*), (*c*), (*d*), (*e*), I beg to answer as follows:—

The state of public opinion does not favour changing the existing causes for divorce.

The existing law tends to a respect of the marriage tie, and they do not lead to hasty marriages.

Public sentiment is against the advisability of publishing the divorce evidence in the newspapers.

The attitude of our community towards citizens who are divorced in States where so-called "easy divorce" is procured is not very friendly.

2nd. As to the average cost of procuring a divorce, to a person of moderate means is from 10*l.* to 20*l.*, to a poor person 5*l.* Divorce is oftener resorted to by the poor.

3rd. The tendency of divorce in this community is not on the increase. It has been confined mainly to the negro population.

4th. The courts in our State having jurisdiction over divorce are the district courts, from which an appeal lies to the supreme court of the State.

5th. The divorce decree when first entered is not always a final decree. The only case where divorce is absolute in the first instance is where the defendant has been condemned to an infamous punishment or has been guilty of adultery. All the other causes for divorce are provisional, and the first degree is called a separation from bed and board, and at the end of a year from the date of which if there has been no reconciliation between the parties the divorce follows, but has to be made the subject of a second suit, and the proof of lack of reconciliation made.

6th. There is no public officer in our State having authority to intervene in divorce actions on behalf of the State or otherwise.

7th. The wife is more frequently the plaintiff in the case.

8th. Citizens of other States do not frequent our State to bring actions for divorce, as our law and jurisprudence of the State is hostile to the granting of divorces.

9th. In accordance with the general sentiment of the country, I am in favour of a national divorce law harmonising all the various conflicting rules in the various States. This to be made the subject of a constitutional amendment to the United States Constitution.

10th. Our courts have no power to order divorce actions to be heard privately, but must be heard as all other litigations are under our Constitution in open court.

11th. Clergymen do not refuse to marry divorced persons. It is optional, of course, with them whether they will celebrate second marriages of divorced persons, and some clergymen do refuse.

Yours, &c.,

J. Arthur Barratt, Esq., Temple Gardens, London, England.

E. H. RANDOLPH, President, Louisiana Bar Association.

(11.)

MAINE.

UNITED STATES COURTS, JUDGE'S CHAMBERS, PORTLAND, MAINE.

22nd February 1910.

MY DEAR MR. BARRATT,

THE pressure of judicial engagements has prevented my answering at length your favour of the 1st instant and the interrogatories therein enclosed.

As to the first question which asks not my views, but "the state of public opinion": As to all the sub-heads, (*a*) to (*e*), each inclusive, there is no crystalised public opinion at present which has any practical force with regard to each of the sub-topics. The diversified condition of public opinion in any particular neighbourhood, outside perhaps of South Carolina, is as well represented by what appears on pages 249 to 251 of The World's Almanac, 1909, which I am mailing you, as could be represented in any other way. Generally speaking, you will find in every neighbourhood as much diversity of opinion between persons as appears in the various laws of the States of the Union with regard to causes for absolute divorce, which this book points out.

Of course, this is limited by two facts: The clergy of the Protestant Episcopal Church and the clergy of the Roman Catholic Church are everywhere united in hostility to the granting of any absolute divorce, except for adultery, and refuse to re-marry persons divorced except for that reason. There are a few exceptions as to the latter with reference to the Protestant Episcopal clergy. The clergy of the other denominations are generally united in opposition to divorce except for adultery, but do not go so far as to refuse to marry. Indeed, I know of some clergymen who take the position that they are bound to marry persons applying for marriage where the law of the State does not interfere.

There is no formulated opinion with reference to the tendency of divorces to lead to hasty marriages, because the prime cause of hasty marriages is the loose laws permitting such marriages. Of course, there is a general weak sentiment against the advisability of publishing the details of divorce in the newspapers; but the classes of newspapers which do publish them have a larger circulation than those which do not.

Letter (*e*) is answered by the fact that the attitude of the better class of the community is generally adverse to all divorced persons, except those who have been divorced where the justice of the case makes a loud demand; and no distinction is made between those who were divorced in States where so-called "easy divorces" are procured, and those who were divorced in other States. So fine a distinction is not made, that I am aware of, beyond creating a *primâ facie* prejudice of not much endurance. Other classes of the community are not at all troubled by questions of that kind.

As to the second interrogatory: It is impossible to estimate the cost any more than to estimate the cost of any litigation in a country like ours where there are no fixed retainers or refreshers. Court disbursements are everywhere very small.

As to the third question: I refer you to the statistics on page 251 of The World Almanac. There are no observations of value I can add thereto or take therefrom.

As to the fourth question: The answer is the highest court of judicature, the supreme judicial court only.

As to the fifth question: The statute is changed from time to time, as public opinion changes.

As to the sixth question: I answer in the negative.

As to the seventh question: I should say the husband was more apt to be brutish than the wife.

As to the eighth question: I should say there is no definite answer to be given. The matter is hardly considered.

As to the ninth question: My personal views would not be of any value for your purposes. I have never shown any disposition to be a teacher in reference thereto.

As to the tenth question: Our own courts often hear divorces in chambers, and might, under some circumstances, hear them quite privately; but what are regarded by the law as "private hearings" are unknown to us. Our courts may, of course, appoint referees, but I have never known one to be appointed in a divorce suit.

As to the eleventh question: I have already answered.

Of course, you understand that I am a Federal Judge, and we have nothing to do with divorce proceedings except incidentally, as in Haddock *v.* Haddock, 201 United States Supreme Court Reports, 562.

My jurisdiction extends over four States, Maine, New Hampshire, Massachusetts, Rhode Island. What I write you refers to the local courts of the State of Maine.

I am only too happy to assist you in any way, and I would be very glad to write you further if you desire.

Yours, &c.,
WILLIAM S. PUTMAN,
(U.S. Circuit Judge).

STATE OF MAINE.

Notice.

SAGADAHOC, ss.—SUPREME JUDICIAL COURT.

April Term, 1910.

To the Honourable Justice of the Supreme Judicial Court next to be held at Bath, within and for said County, on the first Tuesday of April, A.D. 1910.

Edith L. Mariner of Topsham in said County of Sagadahoc, in said State, wife of Herbert Q. Mariner of said Topsham, respectfully represents:

That her maiden name was Edith L. Lancaster; that she was lawfully married to Herbert Q. Mariner, in Boston, State of Massachusetts, on the sixth day of December, A.D. 1899, by Franklin D. Rideout, a Justice of the Peace in and for the County of Suffolk, in said State of Massachusetts; that thereafterwards they lived together as husband and wife in Brunswick in the County of Cumberland, and later in Topsham in the County of Sagadahoc from the time of their said marriage until the sixth day of December, A.D. 1909, that your libellant has always conducted herself toward her said husband as a faithful true and affectionate wife.

That said Herbert Q. Mariner, libellee, on the first day of June, A.D. 1908, and on divers other days and times between said first day of June and the filing of this libel, to wit: on June 17th, August 14th, 15th and 17th, September 25th, December 25th and 31st in the year 1908; and on January 4th, August 7th, 12th and 13th, September 15th, and December 6th in the year 1909, committed the crime of adultery with one Pansy B. Straw of Portland, said County of Cumberland; and on other days and time in said months of June, August and September at said Brunswick and Topsham, and in the month of December in said City of Portland in the year 1908; and in the months of August, September, October, November and December in said Brunswick and Topsham in the year 1909.

That there has been born to your libellant and said libellee two children, Inez G. Mariner now eight years of age, and Herbert Q. Mariner now three years of age; that said libellee is not a suitable person to have the care and custody of said children; *that said libellee has departed to parts unknown and that his present residence is unknown to your libellant and cannot be ascertained by reasonable diligence,* and that there is *no collusion* between your libellant and said Herbert Q. Mariner, libellee, to obtain a divorce.

Wherefore said libellant, Edith L. Mariner prays that a divorce may be decreed between her and her said husband, Herbert Q. Mariner, libellee, for the cause above set forth; that she may have the custody of her said minor children Inez G. Mariner and Herbert Q. Mariner, and that the Honourable Court may further decree to her reasonable and sufficient alimony for the care of her said children and for her support.

Dated February 10, 1910.

EDITH L. MARINER.

STATE OF MAINE.

CUMBERLAND, ss.

February 10, 1910.

Personally appeared, before me, Edith L. Mariner, who subscribed and made oath to the foregoing libel that the same is true.

JOSEPH H. ROUSSEAU,
Notary Public (Seal).

STATE OF MAINE.

SAGADAHOC, ss.—SUPREME JUDICIAL COURT.

In vacation February 11, A.D. 1910.

Upon the foregoing libel, Ordered, That the libellant give notice the said Herbert Q. Mariner to appear before the Justice of our Supreme Judicial Court, to be holden at Bath, within and for the County of Sagadahoc, on the first Tuesday of April, A.D. 1910, by publishing an attested copy of said libel, and this order thereon, three weeks successively in The Bath Daily Times, a newspaper printed in Bath in our County of Sagadahoc, the last publication to be twenty days at least prior to said first Tuesday of April that he may there and then in our said Court appear and show cause, if any he have, why the prayer of said libellant should not be granted.

HENRY C. PEABODY,
Justice of the Supreme Judicial Court.

A true copy of the Libel and Order of Court thereon.

Attest: SANFORD L. FOGG,
14.21.28. Clerk.

MAINE.

PERKINS' DIVORCE WAITED BY WIFE.

Obtained Decree in South Dakota which was not recognised here, and Present Suit "Is to please me," she says.

Rumour says she will marry Cattle King.

[Special Dispatch to the *Boston Herald.*]

Colorado Springs, 13th February 1910.—The wife of Robert F. Perkins, according to her friends, left the luxury of her Boston drawing room and came to Colorado, where, living in a cottage at the foot of Cheyenne mountain, she will quietly remain until the divorce court of Massachusetts releases her from the bonds of matrimony and paves the way for her marriage, it is said, to Bronson Rumsey, the rich cattle baron of Cody, Wyo.

Robert F. Perkins is the son of the late Charles E. Perkins, former president of the Burlington railroad.

The sheriff's office served summons on Mrs. Perkins yesterday in the suit begun by her husband in Middlesex county, Mass. It now developes she came here from Hot Springs, S.D., where she obtained a divorce last October, but the Massachusetts court do not recognise the decree, "and to please me," said Mrs. Perkins, "my husband is obtaining a divorce in Massachusetts."

"It's true, I know Mr. Rumsey," continued Mrs. Perkins, "and I am not surprised that our marriage is rumoured. All I can say is we are not married yet, and I do not care to talk about the matter."

Perkins is a rich banker of Boston. There are four little Perkinses, three of whom are in the East attending school. The fourth, a year-old baby, is with Mrs. Perkins.

(12.)

MASSACHUSETTS.

735, Exchange Building, Boston,
15th February 1910.

MY DEAR SIR,

I HAVE your letter of February 1st, in which you ask me to answer certain questions which are very far reaching. I will answer them as nearly as I can, without making an investigation that would occupy more time than I could readily give.

1. Your first question relates to the state of public opinion in my neighbourhood upon five points:

(*a*) As to whether the existing causes for divorce should be changed in any way, I would say that our statute has stood for many years, and I am aware of no feeling that it should be changed in that respect.

(*b*) As to whether or not the laws tend to cause a lack of respect for the marriage tie?—So far as I am able to judge from the absence of any serious agitation for a change in the law, from the silence of the press, and from the conversation of the people whom I meet, I do not think there is any general belief that the existing laws promote any lack of respect for the marriage tie. There are some people who are entirely opposed to divorce on any ground, but I think the general opinion is in favour of the law as it stands, and that would not be the case if it was felt that it weakened respect for the institution of marriage.

(*c*) I do not think there is any belief that our divorce law leads to hasty marriages.

(*d*) As to the advisability of publishing the details of divorce actions in the newspapers, I think the general feeling is that this should be done; that the publicity which attends a divorce trial has a tendency to keep people from seeking divorce for light reasons, and that it would lead to very evil results if divorces were granted after a secret hearing. This has been done in one or two prominent cases within a few years, but generally opinion has been strongly against it.

(*e*) The question as to the attitude of the community towards citizens who have obtained a so-called divorce in other States upon their return to their home State, I should answer briefly thus: Wherever a person goes out of the State in which he or she resides, and obtains a divorce in another State, the Supreme Court has held the divorce binding only in the State where it is granted. Consequently persons having obtained such a divorce in another State come back in a very questionable position, and are not received as persons of unquestioned status.

2. Your second question relates to the average cost of procuring a divorce. This depends so entirely on circumstances, whether the divorce is uncontested or contested, and on the eminence of the counsel employed, that no figures which I can give you would be enlightening. The ordinary uncontested divorce would perhaps cost from 50 dollars to 150 dollars.

I do not think it possible to say whether a divorce is more often "resorted to by the poor, the rich, or by persons of moderate means," but I should be inclined to think there is very little difference between the classes, and I know of no statistics. In certain rich classes in a few of our larger cities divorce has become rather a scandal, but I fancy that if the statistics were gathered, it would be found that persons of moderate means seek it as often as the rich. Really poor people, as a rule, are not found in the divorce courts.

3. Whether "the tendency to divorce is on the increase or decrease" is a question which it is difficult to answer. As the population increases the number of divorces undoubtedly increase, but whether the percentage within 10 years is greater or less I should find it hard to say. My impression is that on the whole divorce is more frequent than it was.

4. In answer to your fourth question the Superior Court in Massachusetts alone has jurisdiction to grant divorces. This is the tribunal in which our jury trials are had, except in a few cases, and corresponds perhaps as nearly as may be to your court sitting on circuit. No court which corresponds to your minor or county court has that jurisdiction.

5. The divorce decree with us becomes final automatically six months after it is entered, unless some stay has been granted by the court.

6. There is no public officer in our State who is authorised to bring divorce actions on behalf of the State or otherwise.

7. In answer to this question, it is impossible to say whether husband or wife is most frequently complainant.

8. Citizens of other States do not resort to our State "to bring actions for divorce."

9. I am inclined to believe that our divorce laws are wise, and that nothing is gained by preventing the separation of persons whose life together is unhappy.

10. Our courts may order divorce cases "to be heard privately," but the practice is very exceptional, and the court is not inclined to extend it. As I have already said, public opinion is against private hearings.

11. In answer to this question, some clergymen refuse to marry divorced persons, but there is no general rule.

Believing that this answers the questions you put.

Yours, &c.

MOORFIELD STOREY,
President,
Boston Bar Association
(Massachusetts).

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

(13.)

MINNESOTA.

Saint Paul,
17th March 1910.

DEAR SIR,

ANSWERING yours of the 5th instant addressed to the President of the Bar Association of St. Paul, beg to say that I was formerly the President of the Minnesota State Bar Association, and assume that your letter was intended for the present president, who is Mr. James D. Shearer, of Minneapolis.

I have some interest in the subjects of your inquiry, and take this opportunity (notwithstanding you intended to communicate with my successor) to express to you my impressions with reference to the questions asked.

There is no active public opinion in Minnesota upon the question whether or not existing causes for divorce could be changed in any way, but I am inclined to think there is a considerable latent opinion to the effect that divorce should be less easily obtained.

I think that the existing laws do tend in some degree at least to create a want of respect for the marriage ties, but I do not think the condition of our laws lead to hasty marriages. There are hasty marriages, no doubt, but I think the cause is to be found elsewhere than in the divorce laws.

I think details of divorce actions should not be published in the newspapers. I think the facts of suit and its result should be published.

Persons divorced in States where so-called easy divorce is procured are not ostracised socially, though I think it fair to say that social standing is, as a rule, somewhat impaired.

It is difficult to state what is the average cost of procuring a divorce. To persons of moderate means in case of default I would say from 50 dollars to 100 dollars. I think there is no ground for saying that divorce is oftener resorted to by the poor than by the rich, or *vice versâ*.

Generally speaking, I think the tendency to divorce is somewhat—though not markedly—on the increase.

The district courts of this State, *i.e.*, the courts of general jurisdiction, alone have jurisdiction of such cases.

The divorce decree when entered is final. Parties are disabled from marrying in this State for a period of six months after the decree.

No public officer in this State has the power to intervene in a divorce action.

I have no means of saying whether divorces are more frequently applied for by nusbands or by wives.

Minnesota is not resorted to by non-residents for the purpose of obtaining divorces.

I am not certain that I have views which I can successfully defend on the subject of divorce, but am strongly inclined to think that persons divorced ought not to be permitted to re-marry.

In our courts divorce actions are heard publicly. Our courts sturdily refuse private hearings.

Clergymen, excepting Catholics, do not refuse to marry divorced persons.

I recommend that you write to Mr. Shearer, above referred to, for his views.

Honourable E. A. Jaggard, Associate Justice of the Supreme Court of this State, of St. Paul, Minnesota, has, I think, given all the subjects to which you refer painstaking attention, and I am sure would be glad to write you his views.

Yours, &c.,
PIERCE BUTLER
(formerly President of Bar Association of State of Minnesota).

Mr. J. Arthur Barratt,
3, Temple Gardens, Temple,
London, England.

(14.)

MINNESOTA STATE BAR ASSOCIATION.

Austin, Minneapolis,
19th April 1910.

DEAR SIR,

YOUR communication directed to Mr. James D. Shearer, of Minneapolis, Minnesota, has been referred to me with a request that I answer your questions.

1. In regard to the state of public opinion:
   (*a*) As to whether the existing causes for divorces should be changed in any way, I answer that I think the causes for divorce are satisfactory.
   (*b*) Public opinion is to the effect that there is lack of respect for the marriage tie, but that grows out of the mode or manner in which the law is enforced rather than the law itself.
   (*c*) I do not think it leads to hasty marriages.
   (*d*) Public sentiment is in favour of the publication of divorce actions for the reasons it gives publicity as to who are divorced, on what ground, and I think such publicity serves as a deterrent.
   (*e*) In regard to the attitude of the community towards citizens who are divorced in the States where so-called "easy divorce" is procured, on their return to their home State, is one of a hostile nature, and the community frowns upon any such procedure.

2. The average cost of procuring a divorce of a person of moderate means is from 75 dollars to 300 dollars, and that of a poor person from 30 dollars to 50 dollars. Divorce is oftener resorted to by the rich or of moderate means.

3. Divorces are decidedly on the increase.

4. In our State the district courts have original jurisdiction to grant divorces, the minor or county courts have no jurisdiction, and the legislature is prohibited by the constitution from granting divorces.

5. The divorce decree is final, but the court has jurisdiction to modify the decree as to alimony or the custody of children.

6. There is no public officer in this State having authority to intervene in divorce actions on behalf of the State or otherwise to prevent collusion or fraud. The law is deficient in this respect. Divorces would not be so easily granted if the County Attorney, who is the law officer of his county, could intervene in divorce cases tried in his county to see that there was no collusion or fraud.

7. Where the parties are wealthy I think that the husband more frequently resorts to divorce action, but among the poor class the wife is more frequently the plaintiff. Intoxication and lack of support being the chief reasons for the wife resorting to a divorce action.

8. The plaintiff has to be a resident for one year in this State. Citizens of another State cannot resort to an action for divorce, except there is collusion or fraud.

9. In my judgment there ought to be a uniform law relating to divorce throughout the Union. Forty-five separate and sovereign States have supreme power over the subject of divorce. What may be the ground for a divorce in this State may not be a ground in some other State. Some of the States require a residence much shorter than others, thereby opening the door to fraud and collusion. The law as to residence should be uniform. Provision ought to be made for some officer to intervene in divorce actions to see that no collusion or fraud between the parties occur, and that the rights of the State are protected in this regard. Divorce parties should not re-marry until the expiration of one year. In this State we have a statute to the effect that the parties should not re-marry for six months, but it is not an unusual thing for the parties to get married the next day or two after the divorce is granted in some adjoining State. I think that our courts are more at fault than the laws. In some jurisdictions divorces are easily granted. The judges are slack in this regard.

10. The court has power to order divorce actions to be heard privately in court or before a referee. They are usually heard in private or before a referee instead of being heard in open court, as in my judgment they ought to be.

11. Generally speaking I think that all clergymen, except the priest of the Catholic Church and the Episcopalian, clergymen have no objections to marrying divorced persons. Occasionally some Protestant clergyman has scruples, but generally performs the marriage ceremony.

I have answered your questions as fully as the limited time will permit me. If I can be of any further service please advise me.

Yours, &c.,
LAFAYETTE FRENCH,
President.
S.B. Association.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(15.)

MISSISSIPPI.

DEAR SIR, 27th April 1910.

IT gives me great pleasure to comply with your request of the 16th instant with reference to the divorce laws and general sentiment on the subject of divorce in our State. Regarding everything except the actual laws, my answers necessarily are general, and possibly in a few instances are slightly incorrect. I am enclosing the answers on a separate sheet.

Yours, &c.,
ALEXANDER AND ALEXANDER.

Mr. J. Arthur Barratt,
3, Temple Gardens,
London, England.

1.—(*a*) In my opinion there is no necessity for a change of the divorce laws of Mississippi.

(*b*) Our statutes on the subject of divorce are so stringent that there is a healthy respect in our State for the marriage tie among the white people.

(*c*) I do not think that our laws in any way have a tendency to bring about hasty marriages.

(*d*) It is the general opinion in our State, and the newspapers seem to follow it reasonably well, that the details of divorce suits should not be published in the newspapers. Very few, if any, of the divorces in our State are aired in this way.

(*e*) Among the white people of our State the social standing of divorced persons is greatly affected, and I believe the general opinion on this subject greatly deters divorces among the white people.

2.—(*a*) A person of moderate means can procure a divorce for 25 dollars, including attorney's fees and costs of court.

(*b*) There are lawyers in this city especially who take cases for poor persons, and especially negroes, for 10 dollars. Divorce is very often resorted to by the negroes, which compose about 1,000,000 people out of our 1,850,000 population. Among the lower class of white people there is a small proportion of divorces, but it is very rare in our State for the better class of people to apply for a divorce.

3. Numerically divorce is on the increase, but when taken in proportion to the increase in population and the number of marriages it is on the decrease.

4. The county chancery courts only.

5. There is no interlocutory divorce decree in our State, and when the divorce decree is entered it is final so far as that petition is concerned. Of course, we have the two classes of divorce, absolute and *a mensâ et thoro*. The latter can be by petition and the decree ripened into the former.

6. No.

7. Husband.

8. Our divorce laws are so stringent and our courts so strict regarding divorces, especially with reference to white people, that it very rarely, if ever, happens that citizens of other States come to our State to obtain a divorce. In fact, I cannot recall a single instance.

9. Presuming that you have before you our recent statutes touching upon divorce, I will not go into details regarding same. I believe that you will agree with me that if divorce is to be allowed at all that the laws could not be closer drawn than our own statutes draw them, and in our State I believe that any one of the grounds of divorce as set forth in our statutes, if unequivocally proven, should result in a decree of divorce. The only suggestion of a change that I would make would be in the matter of procedure. Among the negroes of our State, the county chancery courts are often very lax in requiring proof, and it is very easy for them to obtain divorces. This is frequently true with reference to the better class of white people. I think that the chancellor ought to be very careful to require strict proof in order to make the case before a decree is entered to come within the strict purview of the statute.

10. Yes. These actions are nearly always heard in private, especially when the parties to the suit are of any social standing. I think it is the general opinion that these secret hearings are better. While there are some objections to them and the notoriety attendant upon a public hearing might frequently deter applicants from taking the step, at the same time, if any one of the grounds outlined in our statute is proven, as I have stated before, I think the party would be entitled to a divorce. This seems to be the general impression. On the other hand, private hearings keep the details out of the newspapers, and for that reason divorces are seldom talked of and are uncommon. The negroes of our State are so constituted that they have no pride whatever, and I believe that negroes would much prefer a public hearing in order to obtain notoriety.

11. Many of the clergymen in our State refuse to marry divorced persons. However, there is no statute in our State prohibiting such a marriage.

Personally I would suggest that the persons of our State authorised by statute to marry persons should be greatly restricted, and required by statute to have in hand more strict proof regarding age, consent of parents, &c. You are doubtless aware that the further south people live the younger is the average age of the contracting parties. People in our section marry very young, many of them under 20. I think a restriction along this line would tend to lessen the divorce evil.

None of my remarks made above touch directly on the negro situation. The whole negro race is a great problem in itself, as you doubtless know. They have no regard for the sanctity of the home; a very small proportion of them are ever married; and nine-tenths or more of the divorce cases are filed by negro men after a short term of married life. This is necessarily so, and it is impossible to frame laws which will lessen this evil, because we are required under the constitution to give everybody equal protection of the laws, and no special statute could be passed with reference to them. Nearly all of the negroes (I am ashamed to say) are guilty of at least two of the grounds of divorce. The fact is that as late as 1864 none of the negroes in the State were ever married, and the fact also is that as a whole they are a shiftless uneducated class, and to a large extent criminally inclined, and absolutely irresponsible, and this makes the divorce evil among them alarmingly large. A greater evil, however, among the negroes is their not marrying at all.

CHARLTON A. ALEXANDER,
President of the Bar
Association of Jackson,
Mississippi.

(16.)

MISSOURI.

THE BAR ASSOCIATION OF SAINT LOUIS.

Missouri,
DEAR SIR, 22nd February 1910.

REPLYING to your letter of 1st February 1910 and the questions enclosed therewith, I would respectfully state:—

I.

(*a*) Public opinion in Missouri does not demand any change in the legal causes for divorce.

(*b*) I believe there is a general opinion that existing laws tend to a lack of respect for the marriage tie.

(*c*) That these laws do lead to hasty marriages.

(*d*) That publishing the details of divorces is inadvisable, and tends to create a disrespect for the marriage ties and increase the number of divorces.

(*e*) The attitude of the community is more or less hostile to divorced persons wherever the decree may have been obtained.

II.

The average cost to a person of moderate means for a divorce is about 100 dollars. To a poor person, about 40 dollars. Persons of moderate means more frequently resort to divorce.

III.

The tendency to divorce is on the increase.

IV.

Courts of general jurisdiction alone have jurisdiction to grant divorce. Minor and county courts have no such jurisdiction.

V.

The only decree entered in divorce cases under our practice is a final decree.

VI.

There is no public officer having authority to intervene in divorce actions on behalf of the State to prevent collusion or fraud, though the courts do at times appoint lawyers in particular cases.

VII.

In the large majority of the cases the wives are plaintiffs.

VIII.

Comparatively few citizens of other States resort to this State to bring action for divorce.

IX.

I am of the opinion that under existing social conditions divorces should be granted under circumstances where the conduct of either party is such as to render the condition of the other intolerable, and that a wide discretion should be given to the presiding judge in each case with express provision entitling an applicant absolutely to a decree upon clear proof of certain specific acts. I believe the laws of the State of Missouri as existing are entirely reasonable and meet the conditions.

X.

Under the laws of this State, divorces must be heard publicly, and the courts have no power to either refer them or provide for private hearings.

XI.

Generally speaking, clergymen do not refuse to marry divorced persons. However, priests of the Roman Catholic Church, ministers of the Episcopal Church, in some cases, and, in some instances, Jewish Rabbis do refuse to perform ceremony for such persons.

Trusting that I have fully answered your questions, I beg to remain,

Yours, &c.,
DANIEL G. TAYLOR (A.B.),
President.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(17.)

NEVADA.

Reno, Nevada,
15th February 1910.

MY DEAR SIR,

I RECEIVED your letter of 1st February to-day.

First, to answer your questions:—

1.—(*a*) There is a pretty strong sentiment that the period of residence necessary to confer jurisdiction should be extended from six months, the present period, to one year.

(*b*), (*c*), (*d*). Public opinion is divided on these points, but as to (*b*) and (*c*), I think that religious convictions have more to do with the opinions of the individuals than the real facts in the case. As to (*d*), I think the opinion of the better class of people is that details should not be published.

(*e*) As Reno is at present the most popular so-called divorce centre, none of our citizens go elsewhere and return hence.

2.—(*a*) 300.00 dollars.
(*b*) 150.00 dollars.

I can discover no distinction in the frequency of divorce applications dependent upon their wealth or poverty.

3. Under the peculiar circumstances existing here, it is on the increase, but eliminating those circumstances, I think it is not increasing.

4. The only court having jurisdiction is the district court.

5. The decree is always final.

6. No. But the judges invariably cross-examine the parties and exercise considerable discretion.

7. The wife is usually the plaintiff.

8. I think not.

9. *See* below.

10. The courts have such power, and it is frequently exercised, although the majority of cases are tried in public. I know of no general sentiment, one way or the other, as to private hearing.

11. Clergymen of the Catholic and Episcopal Churches invariably do. Sometimes, but not often, clergymen of other denominations refuse.

Answering your 9th inquiry, you are doubtless aware that just at present Reno is the so-called "Refuge of Restless Hearts," as it has been named by a writer in one of the popular magazines, and the town and the divorce colony here are the constant subject of newspaper and music-hall jokes, and the town and the people of more or less note from other places, who are here ostensibly for the purpose of securing a divorce, are the constant subjects of Sunday newspaper stories.

Of course there is no doubt that many of the people who have come here, and who have secured divorces, and many of those who are here now, have come for the sole purpose of being relieved from the marriage relation. Their residence here has not been and is not *bonâ fide*, and these people are guilty of fraud upon our courts, and the decrees which they have obtained are worthless both here and in any other court in this country or in England, where the decree might afterwards be questioned. On the other hand, there is much to be said in defence of the conduct of persons who come from other States to secure an easy divorce in Nevada. As you know, in our most populous State, absolute divorce is granted on one ground only, and this is true of some of the other States; and in nearly all of them the conditions upon which an absolute decree may be obtained are more or less drastic. Besides, there are many times conditions which make it expedient from social, family, and other weighty considerations not to sue for and obtain a decree upon the statutory ground of adultery. Where that ground exists desertion, cruelty, or lack of support usually exist also, and the last-mentioned grounds are sufficient in this State upon which to secure an absolute divorce. So that in many cases where the statutory ground exists in, say, New York, the party aggrieved, out of respect for her children or her family, or other considerations, comes here, secures a residence, and a divorce follows, upon the ground of cruelty or desertion, no mention being made of the graver offence.

As I have intimated before, religious conviction has much to do with the attitude of individuals toward the subject of divorce. For my own part, and I believe my opinion reflects that of the majority of people with whom I have come in contact here and elsewhere, whose judgment is unaffected by religious scruples, I not only see no harm, but, on the contrary, I believe that much good results to society, and certainly to the individuals, by relieving a man and woman legally by absolute decree from a relation that has become intolerable and where the marriage has, in fact, ceased to exist. As I say, I think the State is not harmed, but is benefited by declaring by judicial decree a state of facts which already does, in fact, exist.

Believing I have answered your inquiries,

I am, &c.,

C. L. HARWOOD,
Counsellor-at-Law.

J. Arthur Barratt, Esq.,
3, Temple Gardens,
The Temple,
London, England.

(18.)

NEW JERSEY.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, NEW JERSEY.

Home Office, Newark, N.J.,
29th April 1910.

DEAR SIR,

YOUR letter of April 16th addressed to the President of the Bar Association has been handed to me for reply. I cannot answer your questions as fully as you would desire, but comply with your request to the best of my ability.

The causes for absolute divorce in this State are (1) adultery, (2) desertion. For cruelty a divorce from bed and board may be obtained.

1. I do not think there is any public opinion looking toward a change in the existing causes for divorce. These have existed in the State for many years, and I have heard of no suggestion as to changing them. I do not think that they tend to a lack of respect for the marriage ties or that they lead to hasty marriages. As to the advisability of publishing details of divorce actions in newspapers, I think that this is a matter which should be regulated by due sense of propriety, but under our system of government there is no method by which the press can be restricted from publishing such evidence in divorce cases as it may desire. I am unable to reply at all to your inquiry (*e*), as I have no data whatever on which to base an opinion.

2. The average cost of procuring a divorce to a person of moderate means, I should say, would amount to about 200 dollars. A poor person may obtain an order assigning counsel and providing for the conduct of the suit without cost. I cannot say whether divorce is oftener resorted to by the poor, rich, or persons of moderate means, but if I hazarded an opinion I should say that those of moderate means most frequently resorted to a divorce court.

3. I do not think that the tendency to divorce has changed very materially in this State. It is not a State in which a divorce is easily obtained, and I think that such suits as are brought are brought in good faith.

4. The only court having jurisdiction to grant divorce in this State is the Court of Chancery. No minor court has such jurisdiction.

5. Under our present practice the divorce decree when first entered is an interlocutory decree to be followed by a final decree after six months.

6. No public officer has authority to intervene in any divorce action.

7. I am unable to state whether the husband or wife is most frequently the plaintiff in divorce actions.

8. I do not think that citizens of other States resort to this State for the purpose of bringing actions for divorce.

9. I do not think it necessary to state my personal views on divorce beyond suggesting that I think our Divorce Act at the present time needs no substantial changes. I believe that the grounds for divorce permitted in this State are proper, and that the procedure is dignified, and that no criticism has ever been made in connection with the matter.

10. In uncontested divorce cases the usual practice is to refer the matter to a Master in Chancery, who advises the Chancellor whether a decree of divorce should be made. These hearings are generally in private, but the testimony is reduced to writing and filed with the Master's report in the office of the clerk, where it is open to public inspection. Contested divorce cases are heard in open court. I know of no practice which permits a contested divorce case to be heard privately. I have known of some few cases in which the court has directed the testimony taken before the Master to be sealed so that it is not open to public inspection.

I trust that the above will answer your purpose, and am,

Yours, &c.,
EDWARD D. DUFIELD,
President of the
Bar Association of Newark,
New Jersey.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(19.)

NORTH DAKOTA.

Wahpeton, North Dakota,
18th February 1910.

MY DEAR ARTHUR,

YOUR letter of the 12th instant, with enclosure, was forwarded to me here, and received to-day.

Answering your questions which you propound, I would state in answer to Question 1:—

(*a*) That public opinion in this State does not seem to call for a change in the existing causes for divorce.

(*b*) Existing laws do not seem to tend towards a lack of respect for the marriage tie.

(*c*) I have never heard it asserted that it tends to lead to hasty marriages.

(*d*) But very few advise the publishing of details of divorce actions.

(*e*) Communities generally here do not look with favour on citizens who go to South Dakota, where divorces are more easily secured than in our State, obtaining a divorce, and then return to this State.

In answer to Question 2:—

(*a*) The average cost to a person of moderate means is probably 200 dollars.

(*b*) To a poor person probably 50 dollars. In this State, at the present time, divorce is seldom resorted to by people of standing in the community, and not often by the rich, but more often by the poor and those of moderate means.

In answer to Question 3, I would say that the tendency here is on the decrease.

In answer to Question 4, I would state that the district courts, such as the court over which I preside, have exclusive original jurisdiction, but there is the right of appeal to the Supreme Court.

5. The divorce decree in this State, when first entered, is final.

6. There is no public officer in this State having the authority stated, but the judges of the district courts inquire very fully in regard to this class of cases, and applicants knowing that to be the fact, rarely begin an action, except in good faith.

7. Divorce actions prosecuted by the wife probably number twice as many as those begun by the husbands.

8. Citizens of other States do not resort to North Dakota to procure divorces, as a *bonâ fide* residence of one year is required, whereas numerous States, including South Dakota, require a residence of one-half, or less than half that time.

9. It would take some time for me to express fully my personal views in regard to divorces, but I have given it much thought, and especially during the last six years that I have been upon the Bench, and come to the conclusion that the difficulty lies not so much with our law with reference to the securing of a divorce, as it does with the fact that marriages are too hastily consummated. I have no particular fault to find with our divorce laws, but from the fact that my experience has taught me that the great majority of those suing for a divorce were married in haste, I would strongly advocate the throwing of more safeguards around those contemplating marriage.

10. Our courts have power to order divorce actions to be heard before a referee, and in private, but if the testimony is taken before a referee, it must be acted upon independently by the court ordering the reference. If I remember rightly I have referred three such cases during the time I have been upon the Bench; and these were all default matters where the plaintiff was very poor, and it would have been a hardship for her and her witnesses to have travelled the long distance to the county seat where court was held.

11. I understand that clergymen of the Episcopal Church and Catholic priests refuse to marry divorced persons.

The majority of cases that have come under my personal observation have been prosecuted by women whose husbands had deserted them or treated them with such cruelty that they had been, or could be, prosecuted criminally; and in many cases the action for divorce is not brought with the idea of re-marrying, but so that the wife may be protected in the care and custody of minor children, and not be interfered with by a drunken and dissolute husband. There seems to be an impression in some localities that a husband or wife can apply for a divorce, and that if no appearance is made by the defendant, a decree will be granted as a matter of course, but that is not true, as I have personally refused to grant decrees in a number of cases, even though there was no defence whatever. And by following up the matter, I am quite certain that I have never granted a divorce to anyone who came to North Dakota for that purpose. And I am quite positive in regard to this matter, because of the fact that after I grant a decree at one term of court, I make inquiry at the next term in that county, which is about six months subsequent, in reference to the whereabouts of the parties to whom a divorce was granted, and in every instance I have found that they were still residing in the neighbourhood.

I was very glad indeed to hear from you, as it brought back to me our youthful days on 46th Street in New York. My wife and I visited father and mother last April, and found them both hale and hearty, considering their age.

With kindest regards, I am,

Yours, &c.,
FRANK P. ALLEN
(District Judge, Fourth Judicial
District, North Dakota).

Mr. J. Arthur Barratt,
Temple Gardens,
Temple, London.

(20.)

OHIO.

DIVORCE.

1. What is the state of public opinion in your neighbourhood:—

(*a*) As to whether the existing causes for divorce should be changed in any way. *See* letter.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie. *See* letter.

(*c*) As to its tendency to lead to hasty marriages. *See* letter.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers?—This is a matter of good taste. Our newspapers seem to be giving less attention to such cases than formerly.

(*e*) As to the attitude of the community towards citizens who are divorced in the States where so-called "easy divorce" is procured, on their return to your home State?—The cases referred to are so rare that there is no general attitude. Divorces are easily obtained here.

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means.

(*b*) To poor persons.

(*a*) 50 dollars.

(*b*) 30 dollars.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?—By the poor, because there are more of them.

3. Is the tendency to divorce or separation on the increase or decrease?—An increase compared with 20 years ago, but no increase now compared with recent years.

4. What courts have jurisdiction to grant divorce? Have your minor or county courts such jurisdiction?—Courts of Common Pleas, which court in this county is composed of eleven judges. The Court of Insolvency, in this county, also has jurisdiction, but no cases are brought in it.

5. Is the divorce decree, when first entered, a final decree, or is it simply interlocutory, to be followed by a final decree after a certain period of time?—A final decree.

6. Is there any public officer in your State having authority to intervene in divorce actions on behalf of the State, or otherwise, to prevent collusion or fraud?—No.

7. Is the husband or the wife more frequently the plaintiff in divorce actions?—The wife, but I think that the suit is often brought by her through arrangement.

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect in your State for the marriage tie?—This is not frequent enough to have any marked effect. A *bonâ fide* residence of one year is required in this State.

9. State your views on divorce generally, including any suggestion for reform in your divorce laws?—*See* letter.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?—Almost always in open court. There is power to refer to a referee, but it is rarely done.

11. Do clergymen refuse to marry divorced persons?—The Roman Catholic and most all of the Protestant Episcopal clergy refuse. The great majority of the others do not refuse, but do not like to marry divorced persons.

(In all the above questions, suits for nullity or separation are to be included under the name "divorce.")

Yours, &c.,
JAMES LAWRENCE,
President,
Bar Association of Cleveland, Ohio.

OHIO.

Cleveland, Ohio,
15th March 1910.

DEAR SIR,

IN reply to your letter of 5th March, I add the following to the answers written after the questions submitted and herewith returned.

It is not my own view, but I believe it is the view of a majority of the people in this city that, where husband and wife cannot live in some degree of harmony, they are better separated, and, if separated, that an absolute divorce is better both for them and the public. The consequence of this feeling is, in my opinion, a loose interpretation by the courts of the statutes upon the subject, and the frequent granting of divorces on insufficient evidence. For the most part suits are uncontested, and I believe that practically anyone who wishes for a divorce can obtain it. It appears to me, however, that this situation has not as yet produced a lack of respect for marriage or tended, in any marked degree, to hasty marriages, although I confess that the opposite of this would naturally be expected. The only explanation of the seeming paradox must be found in the deep seated regard for the family relation and the feeling against immoral conduct, which still exist amongst the great mass of the American people, notwithstanding some flagrant instances to the contrary which occasionally occur, and which, according to our custom, usually receive the most sensational publicity. After all, divorces are not relatively so frequent as would seem, because the statistics are based on the number of divorces granted compared with the number of marriage licenses, whereas in a rapidly growing city a large proportion of marriages occurred elsewhere. In my personal association with people I meet very few persons who have been divorced, although I do not avoid such persons.

In my judgment the cause of the frequent divorces here is the feeling that the individual has the right to happiness if he can find it, and if a marriage is a failure for him, he has a right to have it dissolved. A considerable number of divorces also occur amongst the more recent immigrants, generally because the woman learns that she does not have to stand ill-treatment here, and sometimes because the wife is unwilling to leave the old country to follow her husband here I fear that the idea of marriage as a social institution has lost ground, and the obligation to society and the common interest is too often disregarded.

The statutes of Ohio permit divorces on the grounds of wilful absence for three years, adultery, extreme cruelty, habitual drunkenness for three years, any gross neglect of duty, and a few other grounds which need not be considered. It is the "gross neglect of duty" which makes divorces so easy, especially where there are eleven judges having power to grant them. Inevitably some of these can find some "gross neglect," and divorces are occasionally granted for the most trifling reasons. This ground of divorce ought certainly to be abolished, but then I suppose the easy going judge would seize upon "extreme cruelty" as a substitute. The fact that the statute is not amended, and the fact of its exceedingly liberal interpretation indicate, however, that the prevailing public sentiment does not wish for a change.

Yours, &c.
JAMES LAWRENCE,
President of the
Cleveland Bar
Association.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(21.)

PENNSYLVANIA.

DIVORCE.

Philadelphia,
14th February 1910.

1.—(*a*) I do not think that there is any general feeling that existing causes for divorce should be changed. In a great majority of the States (upwards of three-fourths) the causes are practically the same. (*See* Report of Divorce Congress of 1906.)

(*b*) Existing laws do tend to promote a lack of respect for the marriage tie. The statistics for the last forty years, prepared under the direction of the United States Census Bureau, show a constantly accelerating increase in the number of divorces as compared with marriages, there being now about one to twelve.

(*c*) I would not say that divorce laws tend to promote hasty marriages. These arise more by reason of lax marriage laws existing in some of the States, especially with regard to the requirements of license.

(*d*) It is not desirable to publish details of divorce actions in newspapers, of course, but that risk must be taken in order to secure the rights of the public, which can only be obtained by open hearings in the presence of the court, and not of any delegated representative of it.

(*e*) The attitude of the community towards divorced persons is gradually changing. Not long ago social ostracism was the penalty, but gradually tolerance has been extended, until now the guilty party in suits for adultery is not infrequently received in society eminently respectable, and this applies to those persons who have become divorced in foreign jurisdictions and have returned thereafter to their own State.

2. The average cost of procuring a divorce to a poor person or to a person of ordinary means is the same. Where service can be obtained in this jurisdiction it would not exceed 100 dollars in an uncontested case. In contested cases, of course, the amount depends very much upon the circumstances of each case. Divorce is more often resorted to by persons of moderate means than by the rich or the poor, if I may hazard a generalisation without any statistics to base it upon.

3. The tendency to divorce in Pennsylvania is markedly on the increase; at least, such is the case in the principal city of Philadelphia.

4. In Pennsylvania the Courts of Common Pleas have jurisdiction to grant divorce. They are the courts of first instance above the grade of magistrate's courts, the latter having jurisdiction only in cases where the amount of controversy does not exceed 100 dollars.

5. In Pennsylvania the divorce decree first entered is a final decree, with a right of appeal to the Supreme Court.

In some States an interlocutory decree is first entered; a final decree after a certain period of time.

6. There is no public officer in our State having authority to intervene in divorce actions on behalf of the State, or otherwise to prevent collusion or fraud.

7. The statistics show that in 66 per cent. or thereabouts of divorce cases in the whole of the United States the wife is the plaintiff.

8. To this question I should say, in a general way, yes.

9. My personal views on divorce are, that so long as the temper of the community requires absolute divorce, the various provisions embodied in the uniform statute should be made a part of the law, in order to secure the community from imposition and fraud and remove the temptation for divorce on trifling causes. Unless the tide of divorce is checked, a social revolution is impending. In my apprehension the evils connected with an abolition of all divorce laws permitting re-marriage are far less than those attendant upon the present system.

10. Our courts have the right to hear cases privately, excepting where they are contested, when they must go through a jury trial as in other cases. The common practice is to refer to a Master, who takes the testimony privately and reports to the court. Difference of opinion exists on this subject. Those favouring divorce would prefer private hearings. Those opposed favour public hearings.

11. All Catholic clergymen and some Episcopalians and others refuse to marry divorced persons, but for the most part there is no difficulty in obtaining a minister to officiate in such cases.

I am, &c.,
WALTER GEO. SMITH,
Chairman of Resolutions Committee of the United States National Congress on Uniform Divorce Laws.

Note.—In the answer to the questions above given, suits for nullity and separation are expressly not included under the name of divorce, as the views that I would express on those subjects are very different, and cannot be included in the same reasoning as applies to suits for absolute divorce strictly so-called.—W. G. S.

(22.)

SOUTH DAKOTA.

Sioux Falls, South Dakota,
DEAR SIR, 16th February 1910.

I HAVE received your letter of February 1st, 1910, enclosing certain questions in regard to the subject of divorce which you wish me to answer as soon as possible. Such answers as I shall give are, of course, not based upon any particular study of the question involved, but are based upon such information as my experience has brought to my attention. My answers also will relate only to the conditions in South Dakota.

1.—(*a*) There is no particular demand by the people of South Dakota for a change in the existing causes for divorce.

(*b*) I do not think the existing laws have any tendency one way or the other to produce a lack of respect for the marriage tie. (*c*) I do not think the existing causes for divorce are ever thought of when marriage is contemplated. (*d*) I see no good reason for publishing the details of divorce actions; on the contrary, I believe such publication to be harmful. (*e*) There are no such persons in this State.

2.—(*a*) From 50 dollars to 150 dollars. (*b*) From 25 dollars to 50 dollars. This does not include court costs, which differ as between default cases and those which are contested. The average court costs would be from 20 dollars to 40 dollars. Among the divorce cases which are denominated foreign, being where persons come to this State from other States to seek a divorce, rich persons are greatly in the majority. Among *bonâ fide* residents those of moderate means would seem to be in the majority. I will say that since the laws of South Dakota were changed, so as to require a residence in good faith of one year before a person could commence an action for divorce, what are called foreign divorces have ceased altogether.

3. Among the average citizens of this State I do not think there is any increase in the tendency to obtain divorces.

4. The Circuit Court for each county is the court of original general jurisdiction in this State and, subject to the right of appeal to the Supreme Court of the State, is the only court in which a divorce action may be commenced.

5. A divorce decree in this State is final as soon as made.

6. There is no public officer in this State having authority to intervene in divorce actions on behalf of the State or otherwise.

7. The wife is more frequently the plaintiff in divorce actions than the husband.

8. During the time that citizens of other States were resorting to this State for the purpose of bringing actions for divorce, I think such practice had a great tendency to lessen the respect for the marriage tie in the particular locality where the foreign residents lived.

9. The causes for divorce in this State are adultery, extreme cruelty, wilful desertion, wilful neglect, habitual intemperance, conviction for felony. Excepting those persons of religious denominations who think there should be no ground for divorce except that of adultery, most people approve of divorces for the above reasons, basing their belief upon the fact that mankind ought to be taken as it is and not as it ought to be, and that a reasonable liberality in granting divorce is productive of more happiness than otherwise. The great question in this country is the obtaining by appropriate legislation of uniformity in causes for divorce and in divorce procedure. As the laws now stand, each State of the United States regulates the divorce question to suit itself, and it thus results that parties may be married in one State and living in adultery in another, all depending upon whether a particular State shall recognise as valid a divorce obtained in a sister State.

10. The divorce cases are heard in open court. Private hearings are not approved of.

11. Clergymen of the Catholic and Episcopalian Churches do not marry divorced persons if they are aware of the fact that either one of the parties have been divorced.

I submit the above as a hurried response to your inquiry.

Yours, &c.,
JOHN E. CARLAND
(United States District Judge for South Dakota).

J. Arthur Barratt, Esq.,
London, England.

(23.)

TENNESSEE.

Knoxville,
DEAR SIR, 23rd May 1910.

IN reply to your letter of several days ago, enclosing a list of questions touching divorce law and practice in the State of Tennessee, we respectfully reply as follows:—

1.—(*a*) There is no general feeling or movement in our State looking to the changing of divorce laws therein.

(*b*) We do not think the existing laws on divorce in our State tend to a lack of respect for the marriage tie, although the ease with which these laws are applied by certain courts may possibly have that effect.

(*c*) The laws of our State on divorce are not so lax as to tend to lead to hasty marriage; undoubtedly many hasty marriages are entered into, but these are probably not affected in our State by any laxity of divorce laws as they are written on the statute books.

(*d*) Sentiment is divided as to the advisability of publishing details of divorce actions in the newspapers; perhaps the better sentiment is against the publishing of unpleasant details.

(*e*) The attitude of citizens in this State toward those who are divorced in those states where "easy divorce" is procured is, generally speaking, that of condemnation. Generally speaking, these divorcees are not admitted to best circles, and are rather looked down upon.

2.—(*a*) Perhaps a fair average of the cost of procuring a divorce to a person of moderate means would be $250.00.

(*b*) A poor person may procure a divorce at various costs from $25.00 to $100.00.

By a person of moderate means we mean those persons worth from, say, $5,000 to $15,000.

Divorce is oftener resorted to by the rich, or by the very poor, much more seldom by persons in moderate circumstances, or what we call the middle classes.

3. The tendency to divorce in our State is possibly slightly on the increase, though not materially so.

4. The courts having jurisdiction to grant divorces in our State are the chancery courts and the circuit courts; our minor, or county courts, have no such jurisdiction.

5. Ordinarily the divorce decree when first entered is final. We have in our State what is known as divorce "*a mensâ et thoro*," and also what is known as absolute divorce. The court may enter either of these decrees, but the decree for absolute divorce is entered 10 times, where the other decree is entered once.

6. The judge trying a divorce suit is supposed to represent the State, and to prevent collusion and fraud in the procurement of divorce.

7. Wives are more frequently plaintiffs in divorce actions in this State.

8. Citizens of other States do not resort to this State to bring action for divorce, as our laws are, perhaps, more stringent than those of most of the States in the Union.

9. We do not care to make any suggestions for the betterment of divorce laws, except we believe that there ought to be a universal divorce law throughout the United States, so as to make it impossible for citizens of one State to resort fraudulently, and with collusion, to the courts of another State to procure "easy divorce."

10. Our courts have the power to order divorce actions to be heard privately, and this is very frequently done, and where there are unpleasant details this practice is generally approved of. It is not, however, by any means universally followed.

11. Clergymen do not generally refuse to marry divorced persons, but this rule also has exceptions. We do not believe the Episcopal Church permits its clergymen to marry divorced persons.

12. We do not think there is any considerable breach of the law in the respect you mention in this question that is caused by the expense of divorce proceeding.

We have, of course, answered your questions only superficially, and without citing instances and cases, but we presume you would prefer this direct method of answer to a more extended one.

Hoping the information given may be of value to you, we remain.

Yours truly,
LUCKY, FOWLER, ANDREWS, AND TATE,
By HUGH M. TATE.

Mr. J. Arthur Barratt,
3, Temple Gardens, Temple,
London, England.

(24.)

TEXAS.

Dallas, Texas,
16th February 1910.

MY DEAR SIR,

I AM in receipt of your letter of 1st February, directed to the President of the Dallas Bar Association. As the time available for a reply is so limited, I will be unable to give some information which could be secured if I had more time. However, I will cover as fully as I can the subjects outlined in your communication.

1. As to the state of public opinion in this community, I will state:—

(*a*) The general opinion among more enlightened people is that our divorce laws are two liberal in the manner in which they are enforced. However, I cannot say that there is a public sentiment demanding any change in the existing causes for divorce. Texas limits the causes to four: cruelty, adultery, abandonment and conviction for crime.

(*b*) While our divorce laws are not considered as lax, yet there is no doubt that the ease with which divorces can be secured under these laws tends to a lack of respect for the marriage tie.

(*c*) The general impression is that the ease of divorce under existing laws does lead to hasty marriages. Yet my personal opinion is that the law has very little effect in producing hasty marriages, but they are due mostly to other causes, such as want of parental control, disregard of religious obligations, &c.

(*d*) Enlightened sentiment is against the publishing of details of divorce actions in the newspapers. Our leading papers, I am glad to say, refuse to publish these details. However, there is a public demand for the sensational, and that demand is pandered to by our yellow journals.

(*e*) Candour compels me to state that the general attitude of the community toward those who have secured easy divorces in other States is more favourable to the divorced parties than it should be. While the more enlightened deprecate these things, yet there is a general lax sentiment which does not look with disfavour upon such cases.

2. As to the average cost of procuring a divorce, I would say 50 dollars to 100 dollars for persons of moderate means and 20 dollars to 30 dollars for poor persons. These figures are based upon uncontested cases; in case of a real contest, which seldom occurs, of course the cost is much higher. Our divorce courts are resorted to by people of all classes, although by far the largest proportion is among the poor and ignorant classes, especially among the negroes. As a rule, divorces among well-to-do people are not so common in Texas as in most of our States.

3. The tendency to divorce seems to be on the increase in this State.

4. The courts having jurisdiction of divorce matters are our district courts, the courts of original general jurisdiction for the trial of causes at law and in equity. Our county and inferior courts do not have such jurisdiction.

5. The divorce decree when entered is a final decree, and not merely interlocutory, in this State.

6. There is no public officer charged with the duty of representing the State to prevent collusion or fraud. However, in all cases in which the defendant is cited by publication and not personally, some praticising attorney of the Bar is appointed by the court to represent the defendant so constructively served with summons. This duty, however, is usually discharged in a perfunctory way, and does not often serve the purpose intended, that is, to protect against fraud or collusion.

7. The clerk of our district courts tells me that the respective numbers of men and women applying for divorce has been practically the same for a number of years past.

8. As the causes for divorce in this State are very limited as compared to other States, citizens of other States do not resort to Texas to bring actions for divorce. To a limited extent our citizens have so used the divorce courts of other States.

9. I would not attempt, with the time at hand, to answer specifically this inquiry.

10. Divorce cases are with us heard by the court publicly, like any other causes. We have not the practice of private hearings nor of hearings before a referee.

11. Some clergymen refuse to marry divorced persons, but, as a rule, no questions are asked on this line. If the parties have a license to wed, issued by the proper authority, that is usually taken as conclusive. However, a few clergymen make further inquiries and refuse to perform such ceremonies unless they are fully satisfied.

With apologies for necessarily having to cover these matters in a hurried way, I remain,

Yours, &c.

THOS. T. HOLLOWAY,
President,
Dallas Bar Association.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(25.)

UTAH.

Salt Lake City, Utah,
18th March 1910.

DEAR SIR,

YOURS of 5th March has been handed to me for reply. Taking up your questions in order:

I do not know that there is any special public opinion in my neighbourhood. My personal opinion is that there is not so much objection to present existing causes of divorce as to the execution of the law by the courts.

Divorces are too easily obtained. It is hard to say how the matter could be cured. Undoubtedly the great majority of people who apply for divorces ought to be separated, but if divorces were more difficult to obtain there would be less hasty marriages and people would try harder to get along together if they knew they could not be separated.

Details, of course, ought not to be published in the newspapers, but the more objectionable they are for general reading, the more the newspapers are inclined to publish them.

I do not know of anyone having left Utah to procure an easy divorce.

I think all serious-minded people are inclined to look on people who have been divorced with suspicion until they know they are not at fault.

The "costs" in our court for a divorce where there is no contest are 10 dollars, unless there is a referee appointed. The court allows him 5 dollars. Attorney's fees are anywhere from 30 dollars up.

More poor people than rich get divorces. There are more poor people than rich, and then the conditions of life are harder.

It looks to me as though more people are being divorced than in the years past; however, I do not know what statistics show.

Our State district courts have jurisdiction. No minor courts have.

The first decree is interlocutory; is made final after six months.

There is no officer authorised to intervene in the case. The judge is supposed to see there is no collusion.

I would say, without having the figures, quite two-thirds of divorces are obtained by women.

I do not know of citizens of other States coming to ours for purpose of getting divorces.

In reply to your ninth question: I think our divorce laws ought to be uniform, and the causes ought to be the same in all States.

I am not sure, if I had the power, I would eliminate any cause now on our statute, but I would, if possible, make every judge be very certain that there was good cause before he granted a divorce.

It is a very sad thing that there are so many people that cannot live together, but I am persuaded that it would be quite as bad if they were compelled to live together if they cannot get along.

Our courts have power to order private hearings, but our judges here have discontinued the practice.

I never knew of any clergyman here excepting Catholic and Episcopal refusing to marry divorced persons.

CHARLES BALDWIN,
President,
Utah Bar Association.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(26.)

VIRGINIA.

Richmond, Virginia,
5th March 1910.

DEAR SIR,

I HAVE recently been elected President of the Bar Association of the City of Richmond, and your letter of February 1st, addressed to the President of the Bar Association of Richmond, has been handed me with the request that I reply to it.

We have, in Virginia, divorce *a vinculo*, and divorce from bed and board. The grounds for the first are the usual common law grounds, sentence to the penitentiary, conviction of an infamous offence prior to marriage without the knowledge of the other, and desertion and abandonment for three years.

The grounds for divorce *a mensa* are cruelty, reasonable apprehension of bodily hurt, abandonment or desertion.

I give below answers to your questions, in the order in which they are asked, as accurately as it is possible for me to do so.

1.—(*a*) Our Legislature, which is now in session, has recently shown its opposition to changing the existent causes of divorce so as to broaden their scope. The expression of opinion was strongly against any law that would make divorces easier, or give greater liberty to the guilty party.

(*b*) In my experience as a practitioner for some 30 years, I have found a great change in the attitude of the public towards divorce. When I first grew up, a divorced person in Virginia was looked upon as disgraced. This opinion followed the innocent party as well as the guilty one. Such persons in society were more or less ostracised. There has been a great change in this respect, however, and I regret to say that it is not unusual to have divorced persons mixing in the best circles, irrespective of their being the plaintiff or defendant. Divorces have been too often gotten simply because the persons could not get along together.

(*c*) Loose divorce laws are thought to lead to hasty marriage. If the parties know that they cannot be separated on slight grounds they are much more apt to give the question of marriage serious consideration.

(*d*) The publication of the details of divorce actions in a newspaper can do no possible good, and often lead to harm.

(*e*) We have not had a great number of cases in which the parties have left the State and gone to some State where divorce can be procured more easily. In cases in which this has occurred, I do not see that the parties are treated any differently on their return from those who have obtained divorces in Virginia.

2. It is impossible to state what is the average cost of procuring a divorce. I have no doubt that many divorces are obtained for poor people at a cost of less than 50 dollars. Our minimum fee for such a suit, where there is any contest, is 50 dollars, and the cost of depositions in a contested suit would vary so largely that it is impossible to say what it would be. If there is no contest in a case, a person of moderate means should obtain a divorce for from 100 dollars to 150 dollars.

Naturally there are more cases of divorce among the poor than among the rich or persons of moderate means. This is due to the fact that we have more poor persons than persons of moderate means or rich in our community. There are more divorces with the coloured people than the white people. They, as a rule, are among the poorer classes in the community.

3. I think the tendency to divorce has been on the increase in Virginia for the past thirty years. There

seems at present to be a reaction against this tendency.

4. Divorces are granted in Virginia by our Circuit or Corporation Courts. We have no minor or county courts.

5. The divorce decree as entered under our law is final. In cases of divorce for abandonment or desertion, a decree *a mensa*, after three years, can be converted into a decree *a vinculo* upon the motion of the innocent party.

6. There is no public officer in Virginia with the authority to intervene in divorce actions on behalf of the State, or otherwise, to prevent collusion or fraud.

7. In my opinion, the wife is more frequently than the husband the plaintiff in a divorce action.

8. The divorce laws of Virginia are not broad enough to induce persons from other States to come to Virginia for the purpose of seeking a divorce.

9. I have always been prejudiced against divorces; I believe that if people realise that they have to live together, and that they cannot get a divorce except upon scriptural ground, they will manage to get along in the majority of instances. I realise that there are cases in which it is absolutely necessary for persons to separate. In such cases, I think it is much better for them to separate without having the right to re-marry. Our divorce *a mensa* covers such cases. I do not think that there should be any radical change in our present divorce laws.

10. The evidence in divorce cases is by depositions. These depositions are taken before a Commissioner in Chancery. They are generally private. It is in the discretion of the Commissioner to admit or exclude parties from the hearing. As a rule, the only persons present are those interested and the witness. I consider the private hearing infinitely preferable to a public hearing. The latter is apt to attract the morbidly curious, and to lead to newspaper publication.

11. Clergymen in the Episcopal Church are forbidden to marry divorced persons except the innocent persons in cases of divorce for adultery. The minister officiating is required, under the Canons of the Church, to get the permission of the Bishop, who is required to have the Chancellor of the Diocese examine the records of the divorce suit and satisfy him that the party has a right to re-marry. The Roman Catholic Church is even more stringent. In other Churches, so far as I am informed, it is within the discretion of the minister.

I will be pleased to give you any further information that may be within my power.

I am, &c.,
B. RAND WELLFORD,
President of Bar Association of Richmond, Virginia.

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

Richmond, Virginia,
25th March 1910.

DEAR SIR,

YOUR favour of March 16th was received by me this morning.

It will give me pleasure to answer the question asked by you in reference to parties living apart without getting a divorce because of the expense of divorce proceedings.

I do not think that there are many cases of this sort with us. As I stated in my previous letter, we have cases of people living apart, because the innocent party does not wish to institute divorce proceedings.

The court fees in divorce cases, where there is no contest, are very small, and we have a class of divorce lawyers who take such cases at almost any price.

Yours, &c.,
B. RAND WELLFORD,
President of Bar Association of Richmond, Virginia.

J. Arthur Barratt, Esq.,
3, Temple Gardens,
Temple, London,
England.

(27.)

STATE OF WASHINGTON.

1. I believe the trend of public opinion in this community to be—
   (*a*) Towards restricting legally recognised grounds for divorce.
   (*b*) That existing laws tend to disrespect for the marriage tie.
   (*c*) The tendency is to lead to hasty marriages.
   (*d*) That it is inadvisable that divorce actions be published in the newspapers.
   (*e*) Our own divorce laws are so easy that our citizens, as a rule, patronise the home market.
2. The average cost of procuring a divorce:—
   (*a*) One hundred dollars.
   (*b*) Fifty dollars.

I cannot say that divorce is more often resorted to by the rich than by the poor, except as there are more of the poor than of the rich.

3. The tendency seems to be on the increase.

4. Jurisdiction to grant divorces is confined here to the court of first resort, entitled the Superior Court of the State of Washington for King County. It is a court of general jurisdiction.

5. The divorce decree is final when entered, but by statute re-marriage is forbidden within six months following the entry of decree.

6. Yes, the public prosecutor, entitled prosecuting attorney, of each county is required to intervene in default divorce cases. There is no public officer having authority to intervene on behalf of the State in other than divorce cases in which the defendant suffers default.

7. I cannot answer.

8. Citizens of other States are not permitted to resort to our State to bring actions for divorce. Our statute requires a *bonâ fide* residence of one year on the part of the plaintiff.

10. Our courts have the power to hear divorce actions privately in court, or to have them tried privately before a referee, but it is seldom done.

11. No.

Nullity decrees are granted only when the plaintiff is proven incapable of consenting to the marriage contract for want of legal age or sufficient understanding, or where such consent shall have been obtained by force or fraud.

HAROLD PRESTON,
President of Seattle Bar Association.

(28.)

WISCONSIN.

MILWAUKEE BAR ASSOCIATION.

Milwaukee,
23rd March 1910.

MY DEAR SIR,

I HAVE your communication of March 5th relating to divorce before me, and I will endeavour to answer your questions as best I can:—

(1) What is the state of public opinion in your neighbourhood on each of the specific questions you put. In my opinion public opinion is somewhat divided. The better opinion, however, in which I share, is in favour of the answers given below:—

   (*a*) As to whether the existing causes for divorce should be changed in any way?—In my opinion the existing causes for divorce do not require any modification.
   (*b*) As to the existing laws tending or not to lack of respect for the marriage tie?—In my opinion the present laws do not have a tendency one way or the other.
   (*c*) As to its tendency to lead to hasty marriages?—The existing divorce laws have no tendency to lead to hasty marriages, but hasty marriages seem to strain those laws at times.
   (*d*) As to the advisability of publishing details of divorce actions in the newspapers?—In my opinion it is detrimental to public morals and welfare to have details of divorce actions published in the newspapers.

(e) As to the attitude of the community towards citizens who are divorced in the States where so-called "easy divorces" are procured on their return to the home State?—I think all such divorces are looked upon with disfavour.

(2) The average cost of procuring a divorce depends largely upon the lawyer employed to procure it. The court costs are nominal. There are a large number of lawyers of no particular standing who seek divorce causes and carry them through for quite moderate charges, while other lawyers of standing either keep out of the practice altogether or, when occasionally employed, charge for their services sums which relatively are large. In my opinion divorce is much oftener resorted to by the poor than by the rich, or by persons of moderate means. The causes of the differences which usually lead up to divorce are "failure to support" on the part of the husband, or "desertion" by him to evade the responsibility of the relation.

(3) The tendency to divorce or separation has been largely on the increase for several years past.

(4) Our circuit courts are courts of original general jurisdiction, and have exclusive jurisdiction to grant divorces. The minor or county courts have no such jurisdiction.

(5) The divorce decree when first entered is an interlocutory judgment which fully determines the rights of the parties, provides for the care, custody and maintenance of the children, fixes the amount of alimony, and the amount of suit money and attorneys' fees.

At the expiration of one year from the entry or from the last modification or revision of such interlocutory judgment, the final judgment may be entered unless such interlocutory judgment shall be reversed or so modified on appeal as to prevent the entry of such final judgment, or unless the court, for sufficient cause, upon its own motion or upon the application of a party to the action, shall otherwise order before the expiration of such period.

(6) I enclose you a recent Act of our legislature providing for a public officer with authority to intervene in divorce actions on behalf of the State.

(7) I think the wife is more frequently the plaintiff in a divorce action than is the husband, because the most frequent ground claimed for divorce is desertion or failure to support.

(8) Citizens of other States very rarely resort to this State to bring actions for divorce because the statute provides:—"No divorce shall be granted unless "the plaintiff shall have resided within this State for "one year immediately preceding the time of the "commencement of this action, except for adultery "alleged to have been committed while the plaintiff "was a resident of this State; or unless the marriage "was solemnised in this State, and the plaintiff shall "have resided therein from the time of such marriage "to the time of the commencement of the action; or "unless the action be brought by the wife and the "husband shall have resided in this State for one year "next preceding the commencement thereof."

(9) I have no suggestions to make as to the reform of any of the divorce laws of this State. Personally my view on divorce generally is this: That it is better to provide a legal way for separation or divorce than to compel persons to continue to live together under the marital tie when the causes for divorce now provided in our statute exist.

(10) Our rule of court is as follows: "No judgment "of divorce shall be granted except upon testimony "taken in open court, unless upon reference by order of "the court for cause shown." The common practice is to deny a reference except for very particular reasons and a reference is almost an unknown practice, all actions for divorce being heard upon testimony taken in open court. Secrecy is only permitted to this extent: "No officer of court with whom the pro-"ceedings in an action for divorce in which adultery "has been charged against either party are filed or "before whom the testimony is taken, and no clerk "of such officer, either before or after the termination "of such action, shall permit a copy of any of the "testimony or pleadings, or the substance of the "details thereof, to be taken by any person, except "either party or the attorney or counsel for such "party who has appeared therein, without the special "order of the court." It is common practice for the court in such actions to order the pleadings and testimony to be sealed and filed. *See* Section 2360j.

(11) Some clergymen refuse to marry divorced persons, but it is rather the exception than the rule.

Yours, &c.,
GEO. D. VAN DYKE,
President of Milwaukee,
Wisconsin,
Bar Association.

Mr. J. Arthur Barratt,
3, Temple Gardens, Temple,
London, England.

No. 191, S.] [Published 11th June 1909.

CHAPTER 323, LAWS OF 1909.

AN ACT to repeal sections 2349, 2350, 2351, 2353, 2354, 2355, 2359, and 2360 of the statutes; to amend sections 2330, 2362, 2366, 2370, 2371, and 2373 of the statutes; and to create sections 2351, 2353, 2354, 2355, 2360, and 2360f, 2360g, 2360h, 2360h—1 to 2360h—4, inclusive, 2360i, 2360j, 2360k, 2360l, 2360n, 2360r, and 2360s of the statutes providing for divorce laws uniform with those of other States.

THE people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:—

Section 1. Sections 2349, 2350, 2351, 2353, 2354, 2355, 2359, and 2360 of the statutes are repealed.

Section 2. Section 2330 of the statutes is amended to read: Section 2330. 1. No marriage shall be contracted while either of the parties has a husband or wife living, nor between . . . persons who are nearer of kin than first cousins, computing by the rule of the civil law, whether of the half or of the whole blood; and no insane person or idiot shall be capable of contracting marriage.

2. . . . It shall not be lawful for any person . . . . who is a party to an action for divorce from the bonds of matrimony . . . in any court of this State to marry again . . . until the final judgment of divorce is entered; and the marriage of any . . . such person solemnised . . . before the entry of the final judgment of divorce shall be null and void. . . .

3. It shall not be lawful for any person divorced from the bonds of matrimony by the judgment of any court of this State prior to the time this Act shall go into effect to marry again within one year from the date of the entry of such judgment or decree, and the marriage of any such person solemnised within one year from the date of entry of any such judgment or decree of divorce shall be null and void.

Section 3. Section 2362 of the statutes is amended to read: Section 2362. In rendering a judgment of nullity of marriage or for divorce, whether from the bond of matrimony or from bed and board, the court may make such further provisions therein as it shall deem just and proper concerning the care, custody, maintenance, and education of the minor children of the parties, and . . . give the care and custody of the children of such marriage to one of the parties to the action, or may, if the interest of any such child shall demand it, and if the court shall find that neither of the parents is a fit and proper person to have the care and custody of any such child, give the care and custody of such child to any fit and proper person, who is a resident of this State and willing to receive and properly care for such child, or to any institution incorporated for such purposes and willing and authorised to receive and care for such child, having due regard to the age and sex of such child. Whenever the welfare of any such child will be promoted thereby, the court granting such decree shall always have the power to change the care and custody of any such child, either by giving it to or taking it from such parent or other person or such institution, provided that no order changing the custody of any child shall be entered until after notice of such application shall have been given the parents of such child, if they can be found, and also to the person or institution that then has the custody of such child.

Section 4. Section 2366 of the statutes is amended to read: Section 2366. In a judgment in an action for a divorce . . . although such divorce be denied, the court may make such order for the support and maintenance of the wife and children, or any of them, by the husband or out of his property as the nature of the case may render suitable and proper.

Section 5. Section 2370 of the statutes is amended to read: Section 2370. . . . In all cases of divorce from bed and board for any of the causes specified in section 2357, the court may decree a separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree; and upon such application the court shall make such order as may be just and reasonable.

Section 6. Section 2371 of the statutes is amended to read: Section 2371. Upon rendering a judgment annulling a marriage the court may make provision for restoring to the wife the whole or such part, as it shall deem just and reasonable, of any estate which the husband may have received from her or the value thereof, and may compel him to disclose what estate he shall have received and how the same has been disposed of . . .

Section 7. Section 2373 of the statutes is amended to read: Section 2373. When a marriage shall be dissolved by the . . . granting of a decree of divorce from the bonds of matrimony, the wife shall not be entitled to dower in any lands of the husband.

Section 8. There are created 19 new sections of the statutes to read. Section 2351. A marriage may be annulled for any of the following causes existing at the time of marriage:—

1. Incurable physical impotency or incapacity of copulation at the suit of either party, provided that the party making the application was ignorant of such impotency or incapacity at the time of marriage.

2. Consanguinity or affinity where the parties are nearer of kin than the first cousins, computing by the rule of civil law, whether of the half or of the whole blood, at the suit of either party; but when any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party.

3. When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

4. Fraud, force, or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.

5. Insanity, idiocy, or such want of understanding as renders either party incapable of assenting to marriage, at the suit of the other, or at the suit of a guardian of the lunatic or incompetent, or of the lunatic or incompetent on regaining reason, unless such lunatic or incompetent, after regaining reason, has confirmed the marriage; provided that where the party *compos mentis* is the applicant, such party shall have been ignorant of the other's insanity or mental incompetency at the time of the marriage, and shall not have confirmed it subsequent to such person's regaining reason.

6. At the suit of the wife when she was under the age of 16 years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age.

7. At the suit of the husband when he was under the age of 18 at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.

Section 2353. Divorce shall be of two kinds:—

1. Divorce from the bonds of matrimony, or divorce *a vinculo matrimonii*.

2. Divorce from bed and board, or divorce *a mensa et thoro*.

Section 2354. For the purposes of annulment of marriage, jurisdiction may be acquired by publication as provided in the statutes, or by personal service upon the defendant within this State, when either party is a *bonâ fide* resident of this State at the time of the commencement of the action.

Section 2355. For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by publication as provided in the statutes or by personal service upon the defendant within this State, under the following conditions:—

1. When, at the time the cause of action arose, either party was a *bonâ fide* resident of this State and has continued so to be down to the time of the commencement of the action, except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a *bonâ fide* resident of this State.

2. If, since the cause of action arose, either party, for at least two years next preceding the commencement of the action, has continued to be a *bonâ fide* resident of this State.

Section 2360. No decree for divorce shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offence charged, or has condoned it, or has been guilty of adultery not condoned; provided that the parties may, subject to the approval of the court, stipulate for a division of estate, for alimony, or for the support of children, in case a divorce be granted or a marriage annulled.

Section 2360f. Anyone charged as a *particeps criminis* shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

Section 2360g. All hearings and trials to determine whether or not a decree shall be granted shall be had before the court, and not before a referee, or any other delegated representative, and shall in all cases be public.

Section 2360h. In each county of the State the circuit judge or judges in and for such county shall by order filed in the office of the clerk of the circuit court on or before the first Monday of July of each year, appoint some reputable attorney, of recognised ability and standing at the Bar, divorce-counsel for each county. Before entering upon the discharge of his duties, such counsel shall take and file in the office of the clerk of the circuit court, an oath to support the constitution of the United States and of the State of Wisconsin, and to faithfully, fearlessly, and impartially discharge the duties of such office. The person so appointed shall continue to act until his successor is appointed and duly qualified, but such counsel may be removed at any time by an order signed by the judge or judges who appointed him, and filed in the office of the clerk of the circuit court of such county. Provided that in any county having a population of two hundred and fifty thousand or more according to the last State or national census, there shall be no appointment of divorce-counsel, but the district attorney or any assistant district attorney shall be the divorce-counsel thereof and perform all the duties of such office.

Section 2360h—1. In any action to affirm or annul a marriage, or for a divorce, the plaintiff shall, within ten days after making service on the defendant, serve a copy of the summons and complaint upon the divorce-counsel of the county in which the action is begun.

Section 2360h—2. No decree in an action to affirm or annul a marriage, or for divorce, shall be granted in any action in which the defendant shall not appear, and contest the right to a divorce in good faith, until such divorce-counsel or the divorce-counsel of the county in which the action is tried shall have appeared in open court and on behalf of the public made a fair and impartial presentation of the case to the court and fully advised the court as to the merits of the case and the rights and interests of the parties and of the public, nor until the proposed findings and judgment shall have been submitted to such divorce-counsel.

Section 2360h—3. Neither such divorce-counsel nor any law partner of such divorce-counsel shall appear in any action to affirm or annul a marriage, or for a divorce, in any court of the county in which he shall be acting as such divorce-counsel, except as herein provided. In case such divorce-counsel or his partner shall be in any way interested in any such action, the presiding judge shall appoint some reputable attorney to perform the services enjoined upon such divorce-counsel herein, and such attorney so appointed shall take and file the oath and receive the compensation provided for herein.

Section 2360h—4. For each case in which such divorce-counsel appears as provided herein, excepting counties having a population of two hundred and fifty thousand or more, he shall receive the sum of ten dollars, to be paid by the county wherein the action was tried, upon the order of the presiding judge, and the certificate of the clerk of the circuit court; provided that when any case shall occupy more than one day of the time of such divorce-counsel, the court may, in its discretion, require the parties to the action or either of them to pay such additional sum to compensate such divorce-counsel, as the justice of the case may require, having due regard to the financial ability of such parties, which additional sum in counties having a population of two hundred and fifty thousand or more shall be paid in the treasury of the county.

Section 2360i. No decree for annulment of marriage, or for divorce, shall be granted in any action in which the defendant does not appear and defend the same in good faith unless the cause is shown by affirmative proof aside from any admission to the plaintiff on the part of the defendant.

Section 2360j. No record or evidence in any case shall be impounded, or access thereto refused except by special written order of the court made in its discretion in the interests of public morals.

Section 2360k. 1. In every action brought to affirm or annul a marriage, or for divorce from the bonds of matrimony, in which it shall be determined by the verdict of a jury or by the findings of a court that the marriage be annulled or the divorce granted, an interlocutory judgment shall be entered which shall fully determine the rights of the parties, provide for the care, custody, and maintenance of the minor children of such marriage, fix the amount of alimony to be paid for the support of the wife, and the amount of suit money and attorney fees.

2. Such judgment shall also determine the status of the parties to such action, but such determination of the status of the parties shall not be effective except for the purposes of an appeal to review the same, until after one year from the date when such interlocutory decree was entered.

3. Any of the provisions of such interlocutory judgment may be reviewed by an appeal therefrom, if taken within one year from the date on which such interlocutory judgment was entered or from the date of the last modification or revision of the same, if it shall be modified or revised by the court after it is first entered.

Section 2360l. 1. At the expiration of one year from the entry or from the last modification or revision of such interlocutory judgment, the final judgment may be entered, unless such interlocutory judgment shall have been reversed or so modified on appeal as to prevent the entry of such final judgment, or unless the court, for sufficient cause, upon its own motion, or upon the application of a party to the action, shall otherwise order before the expiration of such period.

2. If an appeal from such interlocutory judgment be pending at the expiration of said year no final judgment shall be entered until such appeal shall have been finally determined.

3. Such final judgment shall be entered by the court upon application of either party, or of their heirs or personal representatives, if they are deceased, and shall, when entered, be final and conclusive, and no appeal shall be taken therefrom; but such final judgment shall be subject to modification upon application to the court granting the same, so far as it shall have provided for alimony or for the care, custody, and maintenance of the children of such marriage. An appeal may be taken from any determination of the court made upon such application to modify the judgment after such final judgment shall have been entered.

Section 2360n. The court, upon granting a divorce from the bonds of matrimony, may allow the wife to resume her maiden name or the name of a former deceased husband in case there be no children of the marriage.

Section 2360r. Full faith and credit shall be given in all the courts of this State to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another State, territory, or possession of the United States, when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 2358 and 2359. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce by a court of a foreign country as may be justified by the rules of international comity; provided that if any inhabitant of this State shall go into another State, territory, or country for the purpose of obtaining a decree of divorce for a cause which occurred while the parties resided in this State, or for a cause which is not ground for divorce under the laws of this State, a decree so obtained shall be of no force or effect in this State.

Section 2360s. Nothing in this Act contained shall affect or apply to any action for annulment of marriage or for divorce now pending.

Approved 9th June 1909.

C.

SUPPLEMENT TO MR. J. ARTHUR BARRATT'S EVIDENCE.

SUMMARY OF UNITED STATES STATUTES RELATING TO INSANITY AS A GROUND FOR DIVORCE.

Insanity is now a ground for absolute divorce only in Idaho, Maine, Utah and Washington. I do not find it was a cause in California.

The United States Census Report, vol. 2, pp. 4–164, gives statistics of divorce for insanity between 1867 and 1906 in Arkansas, District of Columbia, Florida, Indian Territory, Indiana, Maryland, Mississippi, Nebraska, North Dakota, South Dakota, Virginia, West Virginia and Wisconsin, in addition to the states above mentioned.

I have carefully examined the statutes, however, in all these states, but the only states now making insanity a ground for absolute divorce by statute are those first mentioned above. It was a cause for divorce absolute in Arkansas from 1873 to 1895; in Florida from 1901 to 1905; in North Dakota from 1899 to 1901, and in Wisconsin from 1881 to 1882, in which latter years respectively the statutes were repealed in those states. It is obvious, therefore, that the statistics given in the Census Report in those states since the date of repeal must be statistics of nullity suits and not of divorce, as I do not find that insanity is a cause for judicial separation in any state. It is also obvious that the Census Report statistics of divorces in the states in which there is not now and has not been any statute making insanity a ground for divorce, and also in any state for the period prior to the enactment of such a statute, must be statistics of nullity suits only.

I have carefully gone over the number of cases in the Census Report, and find that the entire number of "divorces" (so-called) for insanity in all the above-mentioned states for the 40 years between 1867 and 1906 was 309. And in the states which do not make insanity a ground for absolute divorce, the following number of divorces (so-called) were granted for that cause:—

In Arkansas, 1873–1895, for the insanity of the husband	48
In Arkansas, 1873–1895, for the insanity of the wife	35
In Florida, 1901–1905, for the insanity of the husband	7
In Florida, 1901–1905, for the insanity of the wife	1
In North Dakota, 1899–1901, for the insanity of the husband	12
In North Dakota, 1899–1901, for the insanity of the wife	3

In Wisconsin, 1881–1882, this year is not given separately; but from 1877–1886 there were of the

husband, 17, and of the wife, 3. But it is not possible to tell from the Census Report what proportion of these "divorces" are absolute and what number are nullity suits.

Arkansas.—The statute of Arkansas, enacted in 1873, read, while in force, that divorce absolute could be had "where either party shall, subsequent to such marriage, have become permanently or incurably insane." (Repealed in 1895.)

Washington.—The statute of Washington read, "in case of incurable chronic mania or dementia" of either party having existed for ten years or more, the court may, in its discretion, grant a divorce.

Florida (enacted 1901, *repealed* 1905).—The statute of Florida provided that divorce absolute could be had for "incurable insanity," but only if it has existed for at least four years prior to the bill, and if the party has been an inmate of some asylum, hospital, home or retreat for the cure of the insane, and shall have been adjudged a lunatic by a competent court, and a committee or guardian of the person and property of the lunatic has been appointed before filing the bill. The superintendent of the asylum or home must be examined as a witness as to the insanity, and the defendant must be proven to have been incurably insane for four years, and that the particular form of insanity must be one generally recognised as incurable. Service of process must be made on the defendant and on the guardian. It is the duty of the court to appoint a competent counsel to act as guardian *ad litem* to appear and defend the suit, and his compensation is taxed as costs. The committee or guardian may also appear and defend. It is the duty of the court in making the decree to require the husband to provide for the insane wife for life if her property is insufficient for that purpose, and supplemental orders therefor can be made if the provision is inadequate. The petitioner must state in his bill what the wife's means are.

Idaho.—The law of Idaho as amended in 1903 provides for divorce absolute when either husband or wife has become "permanently insane," provided he or she shall have been regularly confined in an insane asylum in the United States for one year (formerly six years) next preceding the filing of the bill, and "it "shall appear to the court that such insanity is "permanent and incurable." Plaintiff must have been an actual resident for one year next preceding the action. The court must appoint a guardian *ad litem;* process must be served on the defendant and on the guardian, and also on the county attorney of the district. The latter must appear and defend the action, and no such divorce can be granted in his absence. The plaintiff must pay all the costs of court, the expenses of the county attorney and the expenses and fees of the guardian as fixed and allowed by the court.

Maine.—The laws of Maine provide that divorce absolute may be granted for "insanity" where the party has been confined in a state asylum for the insane for 15 consecutive years next prior to the filing of the bill and is found incurable. The decree will not affect the liability of the plaintiff or petitioner for the support of the defendant, and the court may require the former to furnish security therefor. The decree does not entitle the plaintiff to any portion of defendant's property. Process must be served on the defendant and on the guardian, and if the latter does not appear in court or defendant has no guardian the court must appoint a guardian *ad litem.*

North Dakota.—The laws of North Dakota provided for absolute divorce where defendant confined in an asylum for two years and proven incurably insane.

Wisconsin.—I cannot procure the full text of the law of Wisconsin. It provided for care and maintenance of the defendant and also for a guardian *ad litem* —some competent lawyer appointed by the court.

Pennsylvania.—Pennsylvania in 1905 passed a peculiar statute providing for divorce from an insane husband or wife when the latter has committed an act recognised in that state as a cause for divorce, but insanity itself is not a ground for divorce. It must be proven that the husband or wife of the petitioner is "hopelessly insane," but if he or she "has been for 10 "or more years an inmate of an asylum for the insane, "it shall be conclusive proof of hopeless insanity." The lunacy must be fully established by expert testimony, and the issue tried before the court, a master, or by a jury. Where the wife is insane the court has power to require the husband to enter into a bond to provide for her support during life, and likewise if the wife has sufficient means, the same bond may be required of her if the estate of the husband is insufficient for his support. The Act also provides for an insane wife obtaining a divorce from her husband by means of a petition presented through any relative or next friend of the wife. The insanity must be proven as any other fact in a divorce action.

Utah.—The law of Utah provides that divorce absolute may be granted for "permanent insanity of defendant," who must first be "duly and regularly adjudged to be insane," for at least five years prior to the commencement of the action, and it must appear to the satisfaction of the court, by competent witnesses, that the insanity of the defendant is incurable. A guardian *ad litem* must be appointed for the defendant and service of process must be made on him, on the defendant, and on the county attorney, whose duty it is to investigate the merits of the case, attend the trial of the cause and make such defence as is "just and "proper to protect the rights of the defendant and "the interests of the state." Either plaintiff, or defendant, or legal representatives, are entitled to have defendant brought into court on the trial, or have an examination of defendant by two or more competent physicians to determine the mental condition of the defendant, and for that purpose may have process to enter any asylum or institution where defendant is confined. The court is to assess or apportion the costs "according to the equities of the case."

I take pleasure in sending herewith the full statutes above-mentioned relating to insanity, as a cause for or connected with divorce.

27th June 1910. J. ARTHUR BARRATT.

Full Text of Statutes as to Insanity a Ground for Divorce.

FLORIDA.

This law was repealed by the Act 11th May 1905, Chapter 4972 (No. 88).

An Act making Incurable Insanity a Ground for Divorce of Husband and Wife, and Regulating Proceedings in such Cases.

Be it enacted by the Legislature of the State of Florida:

Section 1. Incurable insanity in either husband or wife shall be a ground for the dissolution of, and divorce from, the bonds of matrimony upon the application of the other party to the marriage; Provided, however, that no divorce shall be granted upon such ground unless such condition upon the part of the defendant, or party so insane, shall have existed for at least four years prior to the filing of the bill for divorce; nor unless such party shall at the filing of the bill be, and shall have been for such period, an inmate and in the care of some asylum, hospital, home, or retreat for the treatment and care of insane persons located in or out of this state, and shall have been, before the filing of such bill, adjudged a lunatic by a competent court within or without this state, and a committee or guardian of the person or property, or both where there is any property of the lunatic, shall have been appointed before the filing of such bill. No such divorce shall be granted unless the superintendent or other principal officer of the asylum, hospital, home, or retreat in which the defendant may be at the time of the trial shall be examined as a witness upon the issue of such insanity, nor unless it be proved that the defendant is and has been for the period last above mentioned incurably insane, and that the class or form of insanity of which the defendant may be suffering is one which is generally recognised as incurable. Nothing in this Act shall be construed to require the appointment of, in any case, any guardian or committee of the person in more than one state or jurisdiction.

Section 2. In all such suits for divorce actual service of the subpœna in chancery shall be made upon the defendant and upon the committee or guardian of the person, and also upon the committee or guardian of the estate of such lunatic, where there is such a

committee or guardian, whether such committee, guardian, or guardians have been appointed by a court of this state or a court without this state; and where such service is made out of this state, proof of service shall be made by affidavit of the party making the service of the time and manner of service, and the copy of subpœna delivered in making such service shall have endorsed thereon the title of the cause and the words "copy of subpœna," and the name of the complainant's solicitor.

Section 3. Whenever the defendant shall at the time of the filing of the bill of complaint be confined in some such asylum, hospital, home, or retreat out of this state there shall be made, whether such defendant shall either be domiciled in or a citizen or resident of this state, but absent therefrom, or shall not be domiciled in nor a citizen nor resident of this state, an order for publication, to be made by the court and to be published and mailed as is provided by section 1413 of the Revised Statutes of the State of Florida as amended by chapter 4129 of the Laws of said state, approved May 31st, 1893, as is provided herein for cases of defendants residing without the United States as distinguished from defendants residing therein, and persons whose residence is unknown; Provided, however, that the only affidavit which shall be necessary for obtaining such an order of publication shall be one to be made by the complainant to the effect that the facts stated in the bill of complaint are true, and setting forth the place of confinement and post office address of the defendant and the names and residences and post office addresses of the committee or committees, guardian or guardians, of such defendant.

Section 4. The return day of the subpœna in chancery in such cases shall be the same as that fixed in the order of publication.

Section 5. It shall be the duty of the court to appoint some competent attorney at law to act as guardian *ad litem* and appear for and defend the suit for the defendant, and his compensation shall be fixed by the court and shall be taxed as other costs of the suit. Any such committee or guardian of the person, whether appointed within or without this state, may also appear and defend any such suit on behalf of the defendant.

Section 6. In case of any suit of a husband against an insane wife under the provisions of this Act, it shall be the duty of the court to inquire into the pecuniary condition of the wife, and if it shall be found that she has no property, or not sufficient property in her own right for her proper care and maintenance during her probable life, the court shall in the decree of divorce require that the husband shall make ample provision therefor, specifying the same; and the decree of divorce shall be of no effect until there has been a decree affirming and approving the provision made by the husband in accordance with such former decree. In determining upon such provision the court shall take into consideration any property which the wife may have in her own right. In case from any cause the provision made for the wife shall at any time become inadequate for her proper care and maintenance, the court may, by supplemental proceedings, require the husband to make necessary provision for her care and maintenance. Should the court find that the wife has sufficient means for her care and maintenance, it shall so adjudicate in the decree for divorce. It shall be the duty of the complainant to state in his bill of complaint what the wife's means of support in her own right are, and whether or not they are sufficient for her support and proper care, or that she has no means as the case may be; Provided, however, that whenever it shall be found that the husband is not able to make such provisions, no requirement of such provisions shall be made in the decree further than the means of the husband will justify.

Section 7. This Act shall take effect immediately upon its passage and approval by the Governor, or upon its becoming a law without the approval of the Governor.

Approved, April 25, 1901.

IDAHO.

H.B. No. 108.

DIVORCE.

An Act authorizing Divorces to be Granted in cases of Insanity, and regulating the Duties of the District Attorney therein.

Be it enacted by the Legislature of the State of Idaho:

Section 1. That in addition to the causes for divorce mentioned in section 2457 of the Revised Statutes of this state, a divorce may be granted when either husband or wife has become permanently insane. Provided, that no divorce shall be granted under the provisions of this Act unless such insane person shall have been duly and regularly confined in the insane asylum of this state for at least six years next preceding the commencement of the action for divorce; nor unless it shall appear to the court that such insanity is permanent and incurable. And provided further, that no action shall be maintained under the provisions of this Act unless the plaintiff shall be an actual resident of this state and shall have resided therein for six years next preceding the commencement of such action.

Section 2. The district courts of the several judicial districts of this state shall have jurisdiction of actions for divorce under the provisions of this Act; and such action shall be brought in the county of this state in which the plaintiff resides. And the court in which such action is about to be commenced shall, upon the filing by the plaintiff of a petition duly verified showing that a cause of action exists under this Act, appoint some person to act as guardian of such insane person in such action, and the summons and complaint in such action shall be served upon the defendant by delivering a copy of such summons and complaint to such guardian and by delivering a copy thereof to the county attorney of the district in which such action is brought.

Section 3. It shall be the duty of the county attorney upon whom the summons and complaint in such action shall be served, to appear for such defendant in such action and defend the same, and no divorce shall be granted under the provisions of this Act except in the presence of the county attorney.

Section 4. In any action brought under the provisions of this Act, the said courts and the judges thereof shall possess all the powers relative to the payment of alimony, the distribution of property and the care and custody of children of the parties that such courts now have, or may hereafter have in other actions for divorce.

Section 5. All the costs of the court in such action, as well as the actual expenses of the county attorney therein, together with the expenses and fees of the guardian therein, shall be paid by the plaintiff; such expenses of the county attorney and the expenses and fees of the guardian shall be fixed and allowed by the court, and the court, or the judge thereof, may make such order as to the payment of such fees and expenses as to the court or judge, may seem proper.

Section 6. Whereas an emergency is declared to exist this Act shall take effect and be in force from and after its approval by the Governor.

Approved February 14th, 1899.

(Sec. 1 amended by Act of 27th February 1903.)

SENATE BILL No. 4.

An Act to amend section one of an Act entitled "An "Act authorising Divorces to be Granted in cases of "Insanity, and regulating the Duties of the District "Attorney therein." Approved February 14th, 1899.

Be it enacted by the Legislature of the State of Idaho:—

Section 1. That section 1 of an Act of the Legislature of the State of Idaho, entitled, An Act authorising Divorces to be Granted in cases of Insanity, and regulating the Duties of the District Attorney therein, approved February 14, 1899, be, and the same is hereby, amended to read as follows:—

That in addition to the causes for divorce mentioned in section 2457 of the Revised Statutes of the State of Idaho, a divorce may be granted when either husband or wife has become permanently insane: Provided, that no divorce shall be granted under the provisions of this Act unless such insane person shall have been duly and regularly confined in the insane asylum of this state, or of a sister state or territory, for at least six years next preceding the commencement of the action for divorce, nor unless it shall appear to the court that such insanity is permanent and incurable. And provided further, that no action shall be maintained under the provisions of this Act unless the plaintiff shall be an actual resident of this state and shall have resided therein for one year next preceding the commencement of such action.

Approved the 27th day of February 1903.

MAINE.

Section 2. A divorce from the bonds of matrimony may be decreed by the supreme judicial court in the county where either party resides at the commencement of proceedings, for causes of adultery, impotence, extreme cruelty, utter desertion continued for three consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium, or other drugs, cruel and abusive treatment, insanity, when in consequence thereof the libellee has been committed to and confined in a state asylum for the insane for fifteen consecutive years next prior to the filing of the libel and is found to be incurable, or on the libel of the wife where the husband being of sufficient ability or being able to labor and provide for her, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her; provided that the parties were married in this state or cohabited here after marriage, or if the libellant resided here when the cause of divorce accrued, or had resided here in good faith for one year prior to the commencement of proceedings, or if the libellee is a resident of this state. But when both parties have been guilty of adultery, or there is a collusion between them to procure a divorce, it shall not be granted.

"Either party may be a witness. But a divorce granted for cause of insanity shall not affect the liability of the libellant for the support of the libellee, unless, upon proof that the libellee is possessed of property sufficient for such libellee's maintenance, the court shall otherwise decree; nor shall it entitle the libellant to any portion of the libellee's property; and the court in its discretion may order the libellant to provide for or contribute to the support of the libellee and to furnish security therefor. Where insanity is alleged as a cause for divorce, a copy of the libel shall be served on the libellee and on the guardian, if any, of the libellee, and if such guardian does not appear in court, or if the libellee has no guardian, the court shall appoint a guardian *ad litem* for such libellee."

Section 2. This Act shall take effect when approved.

Approved March 26th 1907.

NORTH DAKOTA LAWS, 1899, CH. 77.

"Incurable insanity" a cause for divorce absolute. Revised Code, section 2737.

Section 2743. "Incurable insanity must continue " for two years, the person so affected to have been " confined in an asylum for the insane during such " time, before it is a cause for divorce, and the " testimony of the superintendent of such asylum " showing such person to be incurably insane must be " produced before the court granting such divorce " before the same shall be granted."

(*Repealed* in 1901.)

LAWS OF WASHINGTON.

In effect 1887.

Divorce a vinculo.

"8. In case of incurable chronic mania or dementia of either party having existed for ten years or more the court may in its discretion grant a divorce."

LAWS OF ARKANSAS, CODE 1873, SECTION 464.

Divorce a vinculo.

"7. Where either party shall, subsequent to such marriage, have become permanently or incurably insane."

PENNSYLVANIA LAWS OF 1905.

No. 152.

An Act to amend section 8 of the Act approved the 13th day of April 1843, entitled, "An Act to convey " certain Real Estate, and for other purposes," so as to extend its provisions to the husband or wife of a lunatic or *non compos mentis*, and to further regulate the procedure in action for divorce.

Section 1. Be it enacted, &c., that section 8 of an Act approved the 13th day of April 1843, entitled " An Act to convey certain Real Estate, and for other " purposes," which reads as follows:—

"Section 8. That in cases where the wife is a " lunatic or *non compos mentis*, the courts of common " pleas of this Commonwealth are invested with " authority to receive a petition or libel for a divorce, " which may be exhibited by any relative or next friend " of the wife; and the affidavit required by the Act " concerning divorces may be made in the manner " required by the Act by such relative or next friend; " and all the provisions of the several Acts relating " to divorces shall apply to all applications made under " the directions of this section: Provided, that the " fact of the lunacy of the wife and such circum- " stances as may be sufficient to satisfy the mind of " the court as to the truth of the allegation shall " be set forth in the statement; and upon the hearing " of the case before the court, or upon an issue to be " tried by jury, the question of lunacy, with every " other matter of fact that is affirmed by one side " and denied by the other, shall be heard and investi- " gated in the manner prescribed by the provisions " of the several Acts concerning divorces," be and the same is hereby amended so as to read as follows:—

Clause A. That from and after the passage of this Act, in cases where the husband or wife is a hopeless lunatic or *non compos mentis*, the courts of common pleas of this Commonwealth are invested with the authority to receive a petition or libel for divorce; the affidavit as now required by law to such petition for libel to be made by the petitioner; and the service of subpœna in divorce shall be made as now provided, such service to be made upon the committee of such lunatic; and all the provisions of the several Acts relating to divorces shall apply to all applications made under this Act.

Clause B. That the fact of the lunacy of the husband or wife, and such circumstances as may be sufficient to satisfy the mind of the court as to the truth of the allegation, shall be set forth in the petition; and upon the hearing of the case before the court, a matter, or issue to be tried by jury, the question of lunacy shall be fully established by expert testimony, together with every other matter of fact that is affirmed by one party and denied by the other, and the same shall be heard and investigated in the manner prescribed by the provisions of the several Acts concerning divorces.

Clause C. No divorce shall be granted under this Act to any petitioner or libellant unless it be proved beyond a reasonable doubt that the husband or wife of the petitioner is hopelessly insane; Provided, however, that if the husband or wife has been for 10 or more years an inmate of an asylum for the insane, it shall be conclusive proof of hopeless insanity.

Clause D. In case of the application of a husband for divorce from an insane wife, under the provisions of this Act, the courts of common pleas of this Commonwealth, or the judges thereof to whom application is made, are hereby invested with full and complete authority to provide alimony for the support of such insane wife during the term of her natural life, by requiring the petitioner to file a bond, with surety or sureties if necessary, in such sum as they may direct, conditioned as aforesaid, before granting the divorce prayed for. And if the wife be the petitioner, and have sufficient means, the courts aforesaid, or the judges thereof, may provide for the support of

the insane husband as in this section required for an insane wife; provided the insane husband has not sufficient estate in his own right for his support.

Clause E. This Act shall in no way interfere or prevent an insane wife from obtaining a divorce from a husband, as provided in the Act of April 13th, 1843, to which this is a supplement.

Approved the 18th day of April 1905.

(*Note.*—It has been held by the Supreme Court that this Act does not make insanity a ground for divorce.)

UTAH.

Chapter 43.

Divorce.

An Act to amend section 1208 Revised Statutes of Utah, 1898, and providing for Divorce upon grounds of permanent Insanity.

Be it enacted by the Legislature of the State of Utah . . . . § 8. Permanent insanity of defendant; Provided, that no divorce shall be granted on the grounds of insanity unless, first, the defendant shall have been duly and regularly adjudged to be insane by the legally constituted authorities of this state, or some other state, at least five years prior to the commencement of the action; second, unless it shall appear to the satisfaction of the court, by the testimony of competent witnesses, that the insanity of the defendant is incurable. In all such actions, the court shall appoint for the defendant a guardian *ad litem*, who shall take such measures as may be necessary and proper to protect the interests of the defendant; and a copy of the summons and complaint must be duly served on the defendant in person, on his guardian *ad litem*, and on the county attorney for the county in which such action is prosecuted; it shall be the duty of such county attorney to make an investigation into the merits of the case, and to attend the court upon the trial of said cause, and make such defence therein as may be just and proper to protect the rights of the defendant, and the interests of the state.

In all such actions the court and judge thereof shall have all the powers relative to the payment of alimony, the distribution of property, and the custody and maintenance of minor children, which such courts now have or may hereafter possess, in other actions for divorce.

Either the plaintiff or defendant, or legal representatives, shall, upon proper notice, be entitled to have the defendant brought into court upon the trial, or to have an examination of the defendant, by two or more competent physicians, to determine the mental condition of the defendant, and for such purpose either party may, upon application, have process from the court to enter any asylum or institution within the state where such defendant may be confined.

The costs of court in such action shall be assessed or apportioned by the court according to the equities of the case, as may be just and proper.

Approved this 9th day of March 1903.

D.

SUPPLEMENT TO MR. J. A. BARRATT'S EVIDENCE.

Marriage licence laws were not enacted till—

1887 in Arizona.
None in Alaska.
1899 in Idaho.
1887 in Michigan.
1887 in Montana.
1897 in New Jersey (for non-residents only; none yet for residents).
1905 in New Mexico.
1907 in New York.
1891 in North Dakota.
1890 in South Dakota.
1897 in Oklahoma.
None in South Carolina.
1888 in Utah.
1899 in Wisconsin.

LAWS OF PENNSYLVANIA, 1815.

Marriage with particeps criminis.

Section 29. The wife or husband who shall have been guilty of the crime of adultery shall not marry the person with whom the said crime was committed during the life of the former wife or husband; but nothing herein contained shall be construed to extend to or affect or render illegitimate any children born of the body of the wife during coverture.

Section 30. When any woman shall be divorced as aforesaid and shall afterwards openly cohabit at bed and board with the person named in the petition or libel and proved to be partaker in her crime, she is hereby declared to be incapable to alienate directly or indirectly any of her lands, tenements or hereditaments; but all deeds, wills, appointments, and conveyances thereof shall be absolutely void and of none effect, and after her death the same shall descend and be subject to distribution in like manner as if she died seized thereof intestate.

Incompatibility of Temper.

Incompatibility of temper is not a cause for divorce *specifically* mentioned in the statutes of the States for which statistics of this cause are given in the Census Report, vol. 2, nor, indeed, in the statutes of any states at present. Divorces solely for this cause, therefore, must have been deemed to come under some broad ground mentioned in the statutes. Statistics for this cause solely cease in Arkansas, Maine, and Utah in 1886, and continue to 1905 in Indiana and 1906 in Washington, the total in those two states being 380, as stated in my evidence. (Census Report, vol. 2, pp. 22 and 73.)

APPENDIX XIII.

Statutory Causes for Absolute Divorce, for Limited Divorce, and for Annulment, Marriage and Divorce,

[D represents absolute divorce or divorce *a vinculo matrimonii*; S, legal

—	CAUSE.	New England.						Southern North Atlantic.			Northern South Atlantic.					Southern South Atlantic.				Eastern North Central.				
		Maine.	New Hampshire.	Vermont.	Massachusetts.	Rhode Island.[2]	Connecticut.	New York.	New Jersey.	Pennsylvania.[1]	Delaware.	Maryland.[2]	District of Columbia.	Virginia.	West Virginia.	North Carolina.	South Carolina.	Georgia.[3]	Florida.	Ohio.	Indiana.	Illinois.	Michigan.	Wisconsin.
	Desertion:																							
1	Abandonment or desertion	D	[4]D	DS	D	DS	D	S	D	DS	D	DS	S	DS	DS	S	–	D	D	D	DS	D	DS	DS
2	Refusal to move to state	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
	Cruelty:																							
3	Extreme cruelty	D	[5]D	DS	D	DS	D	S	S	S	D	S	S	[6]S	[6]S	S	–	DS	D	D	DS	D	DS	DS
4	Attempt to take life	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	–	–
5	Violence endangering life	–	–	–	–	–	–	–	–	DS	–	–	–	–	–	S	–	–	–	–	–	–	–	–
6	Indignities and defamation	–	–	–	–	–	–	–	–	DS	–	–	–	–	–	S	–	–	–	–	–	–	–	–
	Sexual immorality:																							
7	Adultery	D	D	DS	D	DS	D	D	D	DS	D	D	D	D	D	D	–	D	D	D	DS	D	D	D
8	Crime against nature	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
	Lewd conduct	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
10	Loathsome disease	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
	Intemperance:																							
11	Habitual drunkenness	D	D	–	D	DS	D	–	–	–	D	–	S	–	S	S	–	DS	D	D	DS	D	D	DS
12	Habitual use of drugs	D	–	–	D	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	S	–	–	–
	Neglect of responsibilities:																							
13	Neglect to provide	D	–	DS	D	DS	–	S	–	–	DS	–	–	–	–	–	–	–	–	–	DS	–	DS	DS
14	Neglect of duty	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	S	–	–	–
	Defects of disposition:																							
15	Violent temper	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	–	–	–	–	–
16	Intolerant religious belief	–	D	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
	Crime:																							
17	Conviction or imprisonment	–	D	DS	D	–	D	–	–	D	D	–	–	D	D	–	–	D	–	D	D	D	D	D
18	Fugitive from justice	–	–	–	–	–	–	–	–	–	–	–	–	D	–	–	–	–	–	–	–	–	–	–
	Lack of real consent to marriage:																							
19	Duress or force	–	–	A	–	–	–	A	–	D	–	–	A	–	–	–	–	D	–	–	–	–	A	A
20	Fraud or fraudulent contract	–	–	A	–	–	D	A	–	D	–	–	A	–	–	–	–	D	–	D	–	–	A	A
	Incapacity to contract marriage:																							
21	Mental incapacity	A	–	A	A	–	–	A	D	D	A	–	A	A	A	A	–	D	–	–	–	–	A	A
22	Want of age	A	–	A	A	–	–	A	–	–	DS	–	A	A	A	A	–	–	–	–	–	–	A	A
	Personal unfitness to contract marriage:																							
23	Impotency or physical incapacity.	D	D	A	D	DS	–	A	D	D	D	D	A	DA	DA	DA	–	D	D	D	D	D	DA	D
24	Pregnancy before marriage	–	–	A	–	–	–	–	–	–	–	–	–	D	D	D	–	D	–	–	–	–	–	–
25	Illicit carnal intercourse before marriage.	–	–	–	–	–	–	–	–	–	–	D	–	D	D	–	–	–	–	–	–	–	–	–
	Illegality of marriage:																							
26	Bigamy	A	–	A	A	–	–	A	A	DA	A	A	A	A	A	A	–	–	D	D	–	D	A	A
27	Consanguinity	A	–	A	A	–	–	–	A	D	A	A	A	A	A	A	–	D	D	–	–	–	A	A
28	Miscegenation	–	–	–	–	–	–	–	–	–	A	–	–	A	A	A	–	–	–	–	–	–	–	–
	Other causes:																							
29	Void and voidable marriages (not otherwise specified).	–	A	–	–	DS	A	–	–	–	–	D	–	–	–	–	–	–	–	–	–	–	–	–
30	Previous divorce in another State.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	D	–	–	D	–
31	Misconduct	–	–	–	–	DS	–	S	–	–	–	S	–	–	–	–	–	–	–	–	–	–	–	DS
32	Vagrancy	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
33	Voluntary separation	–	–	–	–	[8]DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D
34	Civil death	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
35	Presumption of death	–	–	–	–	DS	D	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
36	Causes deemed sufficient by court.	–	–	–	–	S	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–

[1] After hearing any cause for divorce the court may decree the divorce or that the marriage is null and void.
[2] Limited divorce may be decreed in a case where absolute divorce is prayed, if the causes prove to be sufficient to entitle the party to the same.
[3] Limited divorce may be granted on any ground which was held sufficient in the English courts prior to May 4, 1784.
[4] There are six provisions dealing with different phases of desertion.

APPENDIX XIII.

BY STATES AND TERRITORIES—extracted from the United States Census Report, 1867–1906 (p. 268).

separation, limited divorce, or divorce *a mensa et thoro;* and A, annulment.]

WESTERN NORTH CENTRAL.							EASTERN SOUTH CENTRAL.				WESTERN SOUTH CENTRAL.					ROCKY MOUNTAIN.					BASIN AND PLATEAU.			PACIFIC.			
Minnesota.	Iowa.	Missouri.	North Dakota.	South Dakota.	Nebraska.	Kansas.	Kentucky.	Tennessee.[1]	Alabama.	Mississippi.	Louisiana.	Arkansas.	Indian Territory.	Oklahoma.	Texas.	Montana.	Idaho.	Wyoming.	Colorado.	New Mexico.	Arizona.	Utah.	Nevada.	Washington.	Oregon.	California.	
DS	D	D	D	D	DS	D	DS	DS	DS	D	DS	DS	DS	D	D	D	D	D	D	D	D	D	D	D	D	D	1
–	–	–	–	–	–	–	–	D	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2
DS	–	–	D	D	DS	D	DS	DS	S	D	DS	–	–	D	D	D	D	D	D	D	D	D	D	D	D	D	3
–	–	–	–	–	–	–	–	D	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4
–	D	D	–	–	–	–	DS	–	DS	–	–	DS	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	5
–	–	D	–	–	–	–	–	DS	–	–	DS	DS	DS	–	–	–	–	D	–	–	–	–	–	D	D	–	6
D	D	D	D	D	D	D	DS	D	DS	D	DS	DS	DS	D	D	D	D	D	D	D	D	D	D	D	D	D	7
–	–	–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	8
–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	9
–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	10
D	D	D	D	D	D	D	DS	D	DS	D	DS	DS	DS	D	–	D	D	D	D	D	D	D	D	D	D	D	11
–	–	–	–	–	–	–	–	–	–	D	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	12
S	–	–	–	–	DS	–	–	DS	–	–	–	–	–	–	–	–	–	D	D	D	D	D	D	D	–	–	13
–	–	–	D	D	–	D	–	–	–	–	–	–	–	D	–	D	D	–	–	–	–	–	–	–	–	D	14
–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	15
–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	16
D	D	D	D	D	D	D	DS	D	DS	D	DS	DS	DS	D	D	D	D	D	D	D	D	D	D	D	D	D	17
–	–	–	–	–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	18
A	–	–	A	A	A	–	DSA	–	–	–	A	A	A	–	–	A	A	A	–	–	–	A	–	D	A	A	19
A	–	–	A	A	A	D	DSA	–	–	–	–	A	A	D	–	A	A	A	–	–	–	A	A	D	A	A	20
A	A	–	A	A	A	A	–	–	–	D	–	A	DSA	A	–	A	DA	A	–	–	–	D	A	D	A	A	21
A	–	–	A	A	A	A	A	–	–	–	–	A	A	A	–	A	A	A	–	A	–	A	A	–	A	A	22
D	A	D	A	A	AD	D	DS	D	DS	D	–	DSA	DSA	D	A	A	A	D	D	D	DA	D	D	D	D	A	23
–	D	D	–	–	–	D	DS	D	DS	D	–	–	–	D	–	–	–	D	–	D	D	–	–	–	–	–	24
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	25
A	[7]A	D	A	A	A	D	–	D	–	D	A	DS	DS	D	–	A	A	A	D	–	–	–	–	–	A	A	26
A	A	–	–	–	A	–	–	–	A	D	A	–	–	–	–	A	–	A	–	A	–	–	–	–	A	A	27
–	–	–	–	–	A	–	–	–	–	–	A	–	–	–	–	–	–	–	–	–	–	–	–	–	A	–	28
–	A	–	–	–	–	–	–	–	–	–	–	–	–	–	A	–	–	–	–	–	–	–	–	A	–	A	29
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	30
S	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	31
–	–	D	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	–	–	–	–	–	–	–	–	32
–	–	–	–	–	–	–	[9]DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	33
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	34
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	35
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	–	–	36

[5] Includes "treatment endangering reason or injuring health."
[6] Also for "reasonable apprehension of bodily hurt."
[7] Provided they have not lived and cohabited together after the death of the former husband or wife.
[8] Living separate and apart for the space of at least 10 years.
[9] Living apart without any cohabitation for five consecutive years next before the application.

APPENDIX XIV.

DECREE "NE TEMERE" ON MARRIAGE.

Instruction of the Archbishop and Bishops of England and Wales. With the Latin Text of the Decree of the S. Congregation of the Council, 2nd August, 1907, a translation of the same, and a Letter addressed to the Bishops, 5th March 1908, *by His Eminence the Cardinal Prefect of Propaganda. Lent,* 1908.

THE NEW LAW OF MARRIAGE.

The decree "Ne temere" has now reached the Archbishops and Bishops of the Province of Westminster, and by the terms of the decree ("Praesens "decretum legitime publicatum et promulgatum "habeatur per ejus transmissionem ad locorum "Ordinarios") it is now promulgated, and its provisions will have the force of law throughout England and Wales from Easter Sunday next.

A copy of the decree in Latin, and of an English translation, is sent herewith; and in addition a copy of a letter from Propaganda, dated 5th March 1908, containing the answer of the S. Congregation of the Council to the question which arose out of the words "nisi pro aliquo particulari loco aut regione aliter a S. Sede sit statutum."

The duty is laid upon the Bishops of taking care that, in all the public Churches of their dioceses, the decree shall be explained to the people in order that all may understand this important law. Instruction should, therefore, be given in every Mission as soon as possible on all the points which the faithful ought to know, particularly as to the conditions required for *validity* and *lawfulness*, the change of the law with regard to *mixed marriages* in England, and the *invalidity* of every marriage which is not celebrated with the assistance of the proper priest (except as provided in VII. and VIII.).

With regard to the Clergy, it is thought well to draw attention to some points which seem to require explanation.

1. In Section II., which gives the definition of *Parochus* in its new and extended meaning for the purpose of the new law of clandestinity, there is firstly the *Parochus* who has *ordinary* jurisdiction strictly so-called. There are none in England.

2. As England has not any canonically erected parishes, but only missions, the priests serving the districts are, for the purpose of this law, to be considered to be on the same level as *Parochi*, in virtue of the "cura animarum" committed to them by the Bishop in the faculties granted to them. Thus they become the valid assistants at all marriages "intra "limites dumtaxat sui territorii," whether the parties are or are not their subjects. As identical faculties are usually granted to both head priests and assistants in missions, some difficulty arises as to the powers of assistant priests, which Propaganda has been considering, and upon which an authoritative decision is expected. Meanwhile, it will be safe to follow what is in accordance with present practice: namely, that in each mission the head priest is the valid and lawful assistant at marriages; and that, with his authority and consent, the other priests of the mission, and other priests of the diocese, may lawfully and validly assist.

Section V. calls attention to the *free state* of those who contract marriage.—The banns must be published as heretofore. But most careful enquiries must be made into the freedom of each party; and such enquiry should extend back over a sufficient number of years, so that the priest may be morally certain of their freedom.

Section IX. introduces fresh duties:

1. As to the Register of Marriages.—The entry is now to be made by the priest in charge of the Registers; and therefore the form in our present Registers should be slightly altered, if need be, so as to read "conjunxit," and not "Ego conjunxi."

2. As to the Register of Baptisms.—This entirely new regulation is considered to be binding *sub gravi*, in exactly the same way as the regulation of making the usual entries in the Register of Marriages. The obligation is now imposed on the head priest of each mission of forwarding a notification of the marriage to the priest in charge of the parish or mission where each of the married parties was baptised. The object of this regulation is to provide a ready means, in the future, of discovering by reference to the Register of Baptisms whether parties who wish to contract marriage have at any time in their lives, or in any part of the world, been married to any one else.

Without express direction to the contrary, it must be presumed that the Episcopal officials of a diocese will not undertake to forward these notices of marriages to their destination, so that this duty will rest upon the local clergy.

The only satisfactory way of fulfilling this onerous duty will be for the clergy of the mission where a marriage is to be celebrated to insist that, as a preliminary to the marriage, each of the parties shall produce either a certificate of baptism, or a note from the priest of the church where the baptism took place, stating that he has ascertained by investigation that the party was baptised in that church. In the case of married converts, if they receive baptism on their reception into the Church, when the entry is made in the Register of their baptism, details should be added with respect to their marriage.

Until new Registers are in use, an entry must be made in the existing Registers according to the following form:

Ipse (or *Ipsa*) *die mensis anni matrimonium contraxit cum in Ecclesia apud*

Signed on behalf of the Bishops of the Province.

✠ FRANCIS, *Archbishop of Westminster.*

DECRETUM

De Sponsalibus et Matrimonio, iussu et Auctoritate SS. D. N. Pii Papae X., a S. Congregatione Concilii Editum.

Ne temere inirentur clandestina coniugia, quae Dei Ecclesia iustissimis de causis semper detestata est atque prohibuit, provide cavit Tridentinum Concilium, *cap. I., Sess. XXIV. de reform. matrim.* edicens: "Qui aliter quam praesente parocho vel alio sacerdote de ipsius parochi seu Ordinarii licentia et duobus vel tribus testibus matrimonium contrahere attentabunt, eos Sancta Synodus ad sic contrahendum omnino inhabiles reddit, et huiusmodi contractus irritos et nullos esse decernit."

Sed cum idem Sacrum Concilium praecepisset, ut tale decretum publicaretur in singulis paroeciis, nec vim haberet nisi iis in locis ubi esset promulgatum; accidit ut plura loca, in quibus publicatio illa facta non fuit, beneficio tridentinae legis caruerint, hodieque careant, et haesitationibus atque incommodis veteris disciplinae adhuc obnoxia maneant.

Verum nec ubi viguit nova lex, sublata est omnis difficultas. Saepe namque gravis exstitit dubitatio in decernenda persona parochi, quo praesente matrimonium sit contrahendum. Statuit quidem canonica disciplina, proprium parochum eum intelligi debere, cuius in paroecia domicilium sit, aut quasi domicilium alterutrius contrahentis. Veram quia nonnunquam difficile est iudicare, certo ne constet de quasi-domicilio, haud pauca matrimonia fuerunt obiecta periculo ne nulla essent: multa quoque, sive inscitia hominum sive fraude, illegitima prorsus atque irrita deprehensa sunt.

Haec dudum deplorata, eo crebrius accidere nostra aetate videmus, quo facilius ac celerius commeatus cum gentibus, etiam disiunctissimis, perficiuntur. Quamobrem sapientibus viris ac doctissimis visum est expedire ut mutatio aliqua induceretur in iure circa formam celebrandi connubii. Complures etiam sacrorum Antistites

omni ex parte terrarum, praesertim e celebrioribus civitatibus, ubi gravior appareret necessitas, supplices ad id preces Apostolicae Sedi admoverunt.

Flagitatum simul est ab Episcopis, tum Europae plerisque, tum aliarum regionum, ut incommodis occurreretur, quae ex sponsalibus, id est mutuis promissionibus futuri matrimonii privatim initis, derivantur. Docuit enim experientia satis, quae secum pericula ferant eiusmodi sponsaliia: primum quidem incitamenta peccandi causamque cur nexpertae puellae decipiantur: postea dissidia ac lites inextricabiles.

His rerum adiunctis permotus SSmus D. N. Pius PP. X. pro ea quam gerit omnium Ecclesiarum sollicitudine, cupiens ad memorata damna ea pericula removenda temperatione aliqua uti, commisit S. Congregationi Concilii ut de hac re videret, et quae opportuna aestimaret, Sibi proponeret.

Voluit etiam votum audire Consilii ad ius canonicum in unum redigendum constituti, nec non Emorum Cardinalium qui pro eodem codice parando speciali commissione delecti sunt: a quibus, quemadmodum et a S. Congregatione Concilii, conventus in eum finem saepius habiti sunt. Omnium autem sententiis obtentis SSmus Dominus S. Congregationi Concilii mandavit, ut decretum ederet quo leges a Se, ex certa scientia et matura deliberatione probatae, continerentur, quibus sponsalium et matrimonii disciplina in posterum regeretur, eorumque celebratio expedita, certa atque ordinata fieret.

In executionem itaque Apostolici mandati S. Concilii Congregatio praesentibus litteris constituit atque decernit ea quae sequuntur.

De Sponsalibus.

I. Ea tantum sponsalia habentur valida et canonicos sortiuntur effectus, quae contracta fuerint per scripturam subsignatam a partibus et vel a parocho, aut a loci Ordinario, vel saltem a duobus testibus.

Quod si utraque vel alterutra pars scribere nesciat, id in ipsa scriptura adnotetur; et alius testis addatur, qui cum parocho, aut loci Ordinario, vel duobus testibus, de quibus supra, scripturam subsignet.

II. Nomine parochi hic et in sequentibus articulis venit non solum qui legitime praeest paroeciae canonice erectae; sed in regionibus, ubi paroeciae canonice erectae non sunt, etiam sacerdos cui in aliquo definito territorio cura animarum legitime commissa est, et parocho aequiparatur; et in missionibus, ubi territoria necdum perfecte divisa sunt, omnis sacerdos a missionis Moderatore ad animarum curam in aliqua statione universaliter deputatus.

De Matrimonio.

III. Ea tantum matrimonia valida sunt, quae contrahuntur coram parocho vel loci Ordinario vel sacerdote ab alterutro delegato, et duobus saltem testibus, iuxta tamen regulas in sequentibus articulis expressas, et salvis exceptionibus quae infra n. VII. et VIII. ponuntur.

IV. Parochus et loci Ordinarius valide matrimonio adsistunt:

§ 1° die tantummodo adeptae possessionis beneficii vel initi officii, nisi publico decreto nominatim fuerint excommunicati vel ab officio suspensi.

§ 2° intra limites dumtaxat sui territorii: in quo matrimoniis nedum suorum subditorum, sed etiam non subditorum valide adsistunt.

§ 3° dummodo invitati ac rogati, et neque vi neque metu gravi constricti requirant excipiantque contrahentium consensum.

V. Licite autem adsistunt:

§ 1° constito sibi legitime de libero statu contrahentium, servatis de iure servandis.

§ 2° constito insuper de domicilio, vel saltem de menstrua commoratione alterutrius contrahentis in loco matrimonii.

§ 3° quod si deficiat, ut parochus et loci Ordinarius licite matrimonio adsint, indigent licentia parochi vel Ordinarii proprii alterutrius contrahentis, nisi gravis intercedat necessitas, quae ab ea excuset.

§ 4° quoad *vagos*, extra casum necessitatis parocho ne liceat eorum matrimoniis adsistere, nisi re ad Ordinarium vel ad sacerdotem ab eo delegatum delata, licentiam adsistendi impetraverit.

5° in quolibet autem casu pro regula habeatur, ut matrimonium coram sponsae parocho celebretur, nisi aliqua iusta causa excuset.

VI. Parochus et loci Ordinarius licentiam concedere possunt alio sacerdoti determinato ac certo, ut matrimoniis intra limites sui territorii adsistat.

Delegatus autem, ut valide et licite adsistat, servare tenetur limites mandati, et regulas pro parochus et loci Ordinario n. IV. et V. superius statutas.

VII. Imminente mortis periculo, ubi parochus, vel loci Ordinarius, vel sacerdos ab alterutro delegatus, haberi nequeat, ad consulendum conscientiae et (si casus ferat) legitimationi prolis, matrimonium contrahi valide ac licite potest coram quolibet sacerdote et duobus testibus.

VIII. Si contingat ut in aliqua regione parochus locive Ordinarius, aut sacerdos ab eis delegatus, coram quo matrimonium celebrari queat, haberi non possit, eaque rerum conditio a mense iam perseveret, matrimonium valide ac licite iniri potest emisso a sponsis formali consensu coram duobus testibus.

IX. § 1° Celebrato matrimonio, parochus, vel qui eius vices gerit, statim describat in libro matrimoniorum nomina coniugum ac testium, locum et diem celebrati matrimonii, atque alia, iuxta modum in libris ritualibus vel a proprio Ordinario praescriptum; idque licet alius sacerdos vel a se vel ab Ordinario delegatus matrimonio adstiterit.

§ 2° Praeterea parochus in libro quoque baptizatorum adnotet, coniugem tali die in sua parochia matrimonium contraxisse. Quod si coniux alibi baptizatus fuerit, matrimonii parochus notitiam initi contractus ad parochum baptismi sive per se, sive per curiam episcopalem transmittat, ut matrimonium in baptismi libri referatur.

§ 3° Quoties matrimonium ad normam n. VII. aut VIII. contrahitur, sacerdos in priori casu, testes in altero, tenentur in solidum cum contrahentibus curare, ut initum coniugium in praescriptis libris quam primum adnotetur.

X. Parochi qui heic hactenus praescripta violaverint ab Ordinariis pro modo et gravitate culpae puniantur. Et insuper si alicuius matrimonio adstiterint contra praescriptum 2i et 3i n. V., emolumenta *stolae* sua ne faciant, sed proprio contrahentium parocho remittant.

XI. § 1° Statutis superius legibus tenentur omnes in catholica Ecclesia baptizati et ad eam ex haeresi aut schismate conversi (licet sive hi, sive illi ab eadem postea defecerint), quoties inter se sponsalia vel matrimonium ineant.

§ 2° Vigent quoque pro iisdem de quibus supra catholicis, si cum acatholicis sive baptizatis, sive non baptizatis, etiam post obtentam dispensationem ab impedimento mixtae religionis vel disparitatis cultus, sponsalia vel matrimonium contrahunt; nisi pro aliquo particulari loco aut regione aliter a S. Sede sit statutum.

§ 3° Acatholici sive baptizati sive non baptizati, si inter se contrahunt, nullibi ligantur ad catholicam sponsalium vel matrimonii formam servandam.

Praesens decretum legitime publicatum et promulgatum habeatur per eius transmissionem ad locorum Ordinarios; et quae in eo disposita sunt ubique vim legis habere incipiant a die solemni Paschae Resurrectionis D. N. I. C. proximi anni 1908.

Interim vero omnes locorum Ordinarii curent hoc decretum quamprimum in vulgus edi, et in singulis suarum diocesum parochialibus ecclesiis explicari, ut ab omnibus rite cognoscutur.

Praesentibus valituris de mandato speciali SSmi D. N. Pii PP. X., contrariis quibuslibet etiam peculiari mentione dignis minime obstantibus.

Datum Romae die 2a mensis Augusti anni 1907.

† VINCENTIUS Card. Ep. Praenest, *Praefectus.*

C. DE LAI, *Secretarius.*

DECREE CONCERNING SPONSALIA AND MATRIMONY.

Issued by the Sacred Congregation of the Council by the Order and with the Authority of Our Holy Father Pope PIUS X.

The Council of Trent, *cap I., Sess. XXIV. de reform. matrim.*, made prudent provision against the rash celebration of clandestine marriages, which the Church

of God for most just reasons has always detested and forbidden, by decreeing: "Those who otherwise than " in the presence of the parish priest himself or of " another priest acting with the licence of the parish " priest or of the Ordinary, and in the presence of " two or three witnesses, shall attempt to contract " matrimony, the Holy Synod renders them altogether " incapable of contracting marriage thus, and decrees " that contracts of this kind are null and void."

But as the same Sacred Council prescribed that the said Decree should be published in all the parishes and was not to have force except in those places in which it had been promulgated, it has happened that many places in which the publication has not been made have been deprived of the benefit of the Tridentine law, and are still without it, and continue to be subject to the doubts and inconveniences of the old discipline.

Nor has all difficulty been removed in those places where the new law has been in force. For often there has been grave doubt in deciding as to the person of the parish-priest before whom a marriage is to be celebrated. The canonical discipline did indeed decide that he is to be regarded as the parish-priest in whose parish one or other of the contracting parties has his or her domicile or quasi domicile. But as it is sometimes difficult to judge whether a quasi-domicile really exists in a specified case, not a few marriages were exposed to the danger of nullity; many too, either owing to ignorance or fraud, have been found to be quite illegitimate and void.

These deplorable results have been seen to happen more frequently in our own time on account of the increased facility and celerity of intercommunication between the different countries, even those more widely separated. It has therefore seemed expedient to wise and learned men to introduce some change into the law regulating the form of the celebration of marriage, and a great many Bishops in all parts of the world, but especially in the more populous states where the necessity appears more urgent, have petitioned the Holy See to this end.

It has been asked also by very many Bishops in Europe, as well by others in various regions, that provision should be made to prevent the inconveniences arising from *sponsalia*, that is mutual promises of marriage, privately entered upon. For experience has sufficiently shown the many dangers of such *sponsalia*, first as being an incitement to sin and causing the deception of inexperienced girls, and afterwards giving rise to inextricable dissensions and disputes.

Influenced by these circumstances, our Holy Father Pope Pius X. desiring, in the solicitude he bears for all the churches, to introduce some modifications with the object of removing these drawbacks and dangers, committed to the S. Congregation of the Council the task of examining into the matter and of proposing to himself the measures it should deem opportune.

He was pleased also to have the opinion of the commission appointed for the codification of Canon Law, as well as of the Eminent Cardinals chosen on this special commission for the preparation of the new code, by whom, as well as by the S. Congregation of the Council, frequent meetings have been held for this purpose. The opinions of all having been taken, His Holiness ordered the Sacred Congregation of the Council to issue a decree containing the laws approved by himself on sure knowledge and after mature deliberation, by which the discipline regarding *sponsalia* and marriage is to be regulated for the future and the celebration of them carried out in a sure and orderly manner.

In execution, therefore, of the Apostolic mandate the S. Congregation of the Council by these letters lays down and decrees as follows:—

Concerning Sponsalia.

I. Only those are considered valid and produce canonical effects which have been contracted in writing signed by both the parties and by either the parish-priest or the Ordinary of the place, or at least by two witnesses.

In case one or both the parties be unable to write, this fact is to be noted in the document and another witness is to be added who will sign the writing as above, with the parish-priest or the Ordinary of the place or the two witnesses.

II. Here and in the following articles, by parish-priest is to be understood not only a priest legitimately presiding over a parish canonically erected, but in regions where parishes are not canonically erected the priest to whom the care of souls has been legitimately entrusted in any specified district and who is equivalent to a parish-priest; and in missions where the territory has not yet been perfectly divided, every priest generally deputed by the superior of the mission for the care of souls in any station.

Concerning Marriage.

III. Only those marriages are valid which are contracted before the parish-priest or the Ordinary of the place or a priest delegated by either of these, and at least two witnesses, according to the rules laid down in the following articles, and saving the exceptions mentioned under VII. and VIII.

IV. The parish-priest and the Ordinary of the place validly assist at a marriage:—

(i) only from the day they have taken possession of the benefice or entered upon their office, unless they have been by a public decree excommunicated by name or suspended from office

(ii) only within the limits of their territory: within which they assist validly at marriages not only of their own subjects, but also of those not subject to them;

(iii) provided when invited and asked, and not compelled by violence or by grave fear, they demand and receive the consent of the contracting parties;

V. They assist licitly:—

(i) when they have legitimately ascertained the free state of the contracting parties, having duly complied with the conditions laid down by the law;

(ii) when they have ascertained that one of the contracting parties has a domicile or at least has lived for a month in the place where the marriage takes place;

(iii) if this condition be lacking, the parish-priest and the Ordinary of the place, to assist licitly at a marriage, require the permission of the parish-priest or the Ordinary of one of the contracting parties, unless it be a case of grave necessity which excuses from this permission;

(iv) concerning persons without fixed abode (*vagos*), except in case of necessity it is not lawful for a parish-priest to assist at their marriage, until they report the matter to the Ordinary or to a priest delegated by him and obtain permission to assist;

(v) in every case let it be held as the rule that the marriage is to be celebrated before the parish-priest of the bride, unless some just cause excuses from this.

VI. The parish-priest and the Ordinary of the place may grant permission to another priest, specified and certain, to assist at marriages within the limits of their district.

The delegated priest, in order to assist validly and licitly, is bound to observe the limits of his mandate and the rules laid down above, in IV. and V., for the parish-priest and the Ordinary of the place.

VII. When danger of death is imminent and where the parish-priest or the Ordinary of the place or a priest delegated by either of these cannot be had, in order to provide for the relief of conscience and (should the case require it) for the legitimation of offspring, marriage may be contracted validly and licitly before any priest and two witnesses.

VIII. Should it happen that in any region the parish-priest or the Ordinary of the place or a priest delegated by either of them, before whom marriage can be celebrated, is not to be had, and that this condition of things has lasted for a month, marriage may be validly and licitly entered upon by the formal declaration of consent made by the spouses in the presence of two witnesses.

IX.—(i) After the celebration of a marriage the parish-priest, or he who takes his place, is to write at once in the book of marriages the names of the couple and of the witnesses, the place and the day of the celebration of the marriage, and the other details, according to the method prescribed in the ritual books or by the Ordinary; and this even when another priest delegated either by the parish-priest himself or by the Ordinary has assisted at the marriage.

(ii) Moreover, the parish-priest is to note also in the book of baptisms, that the married person contracted marriage on such a day in his parish. If the married person has been baptised elsewhere the parish-priest who has assisted at the marriage is to transmit, either directly or through the episcopal curia, the announcement of the marriage that has taken place, to the parish-priest of the place where the person was baptised, in order that the marriage may be inscribed in the book of baptisms.

(iii) Whenever a marriage is contracted in the manner described in VII. and VIII., the priest in the former case, the witnesses in the latter are bound conjointly with the contracting parties to provide that the marriage be inscribed as soon as possible in the prescribed books.

X Parish-priests who violate the rules thus far laid down are to be punished by their Ordinaries according to the nature and gravity of their transgression. Moreover, if they assist at the marriage of anybody in violation of the rules laid down in (ii) and (iii) of No. V. they are not to appropriate the stole-fees, but must remit them to the parish-priest of the contracting parties.

XI.—(i) The above laws are binding on all persons baptised in the Catholic Church and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterwards from the Church) whenever they contract sponsalia or marriage with one another.

(ii) The same laws are binding also on the same Catholics as above, if they contract sponsalia or marriage with non-Catholics, baptised or unbaptised, even after a dispensation has been obtained from the impediment *mixta religionis* or *disparitatis cultus*; unless the Holy See decree otherwise for some particular place or region.

(iii) Non-Catholics, whether baptised or unbaptised, who contract among themselves, are nowhere bound to observe the Catholic form of *sponsalia* or marriage.

The present decree is to be held as legitimately published and promulgated by its transmission to the Ordinaries, and its provisions begin to have the force of law from the solemn feast of the Resurrection of Our Lord Jesus Christ, next year 1908.

Meanwhile let all the Ordinaries of places see that this decree be made public as soon as possible, and explained in the different parochial churches of their dioceses in order that it may be known by all.

These presents are to have force by the special order of our Most Holy Father Pope Pius X., all things to the contrary, even those worthy of special mention, notwithstanding.

Given at Rome on the 2nd day of August in the year 1907.

† VINCENT, Card. Bishop of Palestrina, *Prefect.*
C. DE LAI, *Secretary.*

ILLMĒ AC RMĒ DOMINE.

Post latum a S. Congregatione Concilii die 2 mensis Augusti superioris anni, iussu et auctoritate SS. D. N. Pii PP. X. Decretum "*Ne temere*" de Sponsalibus et Matrimonio, quamplures Ordinarii huic S. Consilio Propagandae Fidei subiecti petierunt utrum vim suam adhuc retineret Declaratio a Benedicto PP. XIV. data die 4 Novembris anni 1741 pro matrimoniis in Foederatis Belgii provinciis inter haereticos contractis et contrahendis, quae deinde a S. Sede multis aliis regionibus extensa fuit. Haec Ordinariorum petitio cum iudicio EE. Patrum S. Congregationis Concilii subiecta fuerit in causa *Romana et Aliarum*, iidem E.E. Patres in generali conventu habito die 1 Februarii u. p. ad Dubium IV.: "*An sub art. XI.* § 2, *in exceptione* "*ennuciata illis verbis 'nisi pro aliquo particulari loco* "*'aut regione aliter a S. Sede sit statutum' comprehendatur tantummodo Constitutio* Provida *Pii PP. X.*; "*an potius comprehendantur quoque Constitutio Benedictina et cetera eiusmodi indulta impedimentum clandestinitatis respicientia*" respondendum censuere: "*Comprehendi tantummodo Constitutionem* Provida; "*non autem comprehendi alia quaecumque Decreta, facto* "*verbo cum Sanctissimo*": quae resolutio a SSmo Dño. Nro. confirmata et approbata fuit.

Haec pro meo munere cum Amplitudine Tua communico, et precor Deum ut Te diu sospitem incolumemque servet.

Datum Romae ex Aedibus S. C. de Propaganda Fide die 5 Martii 1908.

Amplitudinis Tuae
addictissimus servus
HIERONYMUS CARD. GOTTI, Praefectus
ALOISIUS VECCIA, *Secretarius.*

OBSERVATIONS UPON THE DECREE "NE TEMERE."

The Decree "Ne Temere" was issued by the Holy See on August 2nd 1907, and came into force generally on Easter day, April 19th 1908. (A delay was granted for Scotland until September 1st 1908, and for all China, until Easter 1909.)

(1) It is binding upon all Catholics, except Uniates (Catholics of the Oriental rites) and Catholics in any particular countries "for which the Holy See has otherwise ordered." This last exception applies to Catholics in the German Empire for which the Holy See only a short time before (January 1906) had already provided new marriage regulations in the Bull "Provida." This exemption and special provision has been extended to Catholics in the Austro-Hungarian Empire.

The Decree *Ne Temere* does not affect in any way the marriage contracts of Non-Catholics between themselves.

The Decree bears upon—

(*a*) Promises of marriage that are called espousals or *Sponsalia*, and

(*b*) Marriages in which both parties and Catholics or one party is Catholic (viz., mixed marriages).

(2) The gist of the Decree—

1. Espousals, viz., solemn promises of marriage between Catholics— or between a Catholic and a non-Catholic—are declared to be canonically invalid, unless they are—
   (*a*) made in writing, and signed by the parties,
   (*b*) and signed either by the parish priest, or at least by two witnesses.
2. Marriages between Catholics, or between a Catholic and a non-Catholic (mixed marriages) are declared to be invalid,* unless—
   (*a*) the marriage be celebrated before the Catholic bishop or priest of the place, or a priest delegated by him,
   (*b*) in the presence of at least two witnesses.

(3) Espousals (*sponsalia*) are promises of marriage to be contracted at a future time.

Such promises, if solemnly made and accepted between qualified persons have entailed in Church law certain canonical effects, viz.:—

1. The parties are so bound to each other that the marriage of either to any other person is barred or prohibited. (The bar is merely prohibitive, and not diriment or invalidating, so that if either party did marry another person, the marriage, although sinful, would be valid.)

* When the Church declares a marriage to be null and invalid, it does not follow that she declares the children of the marriage to be illegitimate. In Canon Law, the children of an invalid marriage are held to be legitimate, if either of the two parties has contracted the marriage in good faith and believing it to be valid. (*Cf.* De Angelis. Praelectiones Juris Canonici, vol. III., p. 270.

2. The parties are so bound to each other, that if either party marry any blood-relation of the other in the first degree, such marriage is invalid.

(4) The result of the new Decree "*Ne Temere*" is to require that all such espousals or promises of marriage between Catholics, or between a Catholic and a non-Catholic, shall be made by the parties—

1. in writing,
2. and attested by the parish priest, or at least two witnesses.

And that such espousals or promises not fulfilling these conditions are in the law of the Church invalid and deprived of the canonical effects above mentioned.

(5) This invalidity the Church affirms to be in the sphere of conscience and of Church law. It involves no incursion on the domain of civil law, which in this country is quite independent of Catholic Canon law. The Civil law is free within its own sphere to treat such promises of marriage according to its own principles of contract, to determine their validity according to its own standards, and to punish by civil penalties all breaches of law or justice from its own point of view.

(6) The right of the Church to determine for her members in these matters the conditions of canonical validity, viz., validity in conscience, and in the sight of God, is based upon her claim to have Divine Authority over Christian Marriage as a Sacrament, and therein over the contract which is its basis, as well as over the contract of espousals which is prefatory to it.

(7) While the Church teaches that she holds from God this power for the good of the Christian people, she teaches that her laws can never override, or be meant to override, any right or obligation of natural justice. Thus, in cases in which A, a Catholic, has made a promise of marriage either to B, a Catholic, or to C, a non-Catholic, outside of the required conditions, the Church holds that such promise is invalid in Church law, and in conscience, but that, in so far as A, by non-fulfilment of the promise, has inflicted injury on B or C, he is bound in conscience to make all due compensation for such injury, and that he cannot be absolved by the Church, or admitted to Sacraments, until he has pledged himself to do so. Thus Cardinal Gennari, in his commentary upon the Decree, says "It "does not follow that the deceiver of another in this "matter is under no obligation in conscience. He is "bound to make reparation for all the injuries he has "caused through his invalid promise, and he may not "be absolved until he has made this reparation." *Commento.* p. 20.

(8) The same obligation of conscience applies to cases of marriages which are invalid, by non-fulfilment of the conditions required by the Decree.

(9) The purpose and object of the Decree as well as the separate provision made for the German Empire, and extended (23rd February 1909) to the Kingdom of Hungary, can be best understood from the following facts:—

(*a*) From the earliest times: it had been the rule and custom of the Catholic people to have their marriages blessed by a priest in their churches.

(*b*) Nevertheless, before the time of the Council of Trent (1563), marriages made, not in church, but privately by the parties themselves, each taking the other, were held by the Church to be *valid*, if, upon other grounds, no invalidating impediment existed. Such clandestine marriages were discouraged and forbidden, but if made and proved, they were recognised as valid.

(*c*) The reason of this recognition lay in the fact that the Church teaches that marriage is a sacrament, in which the *contracting parties themselves are the ministers*, and that they administer this Sacrament to themselves to their mutual consent, and that the officiating priest is only the *witness*, and not the effector of the sacrament.

(*d*) Many evils and abuses in the course of time were found to arise from these clandestine marriages, which were liable to be disavowed by the parties later on, or to become incapable of being juridically proved owing to death or absence of witnesses. For this reason, the Holy See at the Council of Trent felt bound to take order against the evil, and the Christian States, notably France, urged strongly upon the Council the necessity of treating as invalid all clandestine marriages.

(*e*) It was felt to be necessary in the interest of society, that all marriages, under pain of nullity, should be celebrated before some official authority. The proposition that marriages might be celebrated before any three witnessss or before public notaries was rejected in favour of the plan that the parish priest of the parties should be one of the required witnesses on the grounds that the parish priest was the more competent judge as to Church marriage law, and that the marriages thus celebrated before him would be public in the highest sense as celebrated and attested "before the face of the Church" as a sacramental act ought to be.

(*f*) At the same time, the Council wished to safeguard the liberty of contract, and refused to enact as a condition of validity that the parish priest should "preside over the marriage," and even though the Ambassadors of the French King were most pressing upon this point, the Church would only consent to require that the marriage should be contracted *in the presence of* the parish priest of the parties, and at least two other witnesses. (Pallavicini, Istoria del Concilio di Trento. V. 8.)

(*g*) The Council of Trent (Session xxiv., c. 1) thus issued the Decree well-known as *Tametsi*, which declared clandestinity to be in future an invalidating impediment to marriage, and that a marriage, *under pain of nullity, must be celebrated in the presence of the parish priest of the contracting parties and at least two witnesses.*

(*h*) As in 1563, when this Decree (*Tametsi*) was made, many countries had already separated from the Church and followed the Reformation, the Council, out of consideration of the difficulties which might be created in non-Catholic Countries, caused that it should be promulgated only in those countries in which the bulk of the population was Catholic, and that in mixed districts it should not come into force until 30 days after promulgation, so that Protestants living in such districts would have time to form themselves into a separate congregation and so exempt themselves from the effect of the promulgation.

(*i*) It thus came to pass that over a large area of the Catholic Church—representing broadly the Catholic nations—the marriage law was regulated by the decree *Tametsi*, and in it marriages of Catholics and mixed marriages not celebrated before the Catholic parish priest were adjudged to be not only sinful but *invalid.*

(*j*) At the same time, over another area—representing broadly the non-Catholic countries or districts—the marriage law continued to be regulated by the Pre-Tridentine legislation, and in it, marriages of Catholics or mixed marriages not celebrated before the Catholic parish priest were adjudged sinful, but *valid.*

(*k*) This latter or non-Tametsi area, in which the Decree of Trent was not promulgated, included England, Scotland, Prussia, and Protestant States of Germany and Cantons of Switzerland Norway, Sweden and Denmark, Turkish Empire, Abyssinia, a great part of the United States, and some parts of Canada.

(*l*) This area was further extended by the action of the Holy See. Pope Benedict XIV. issued a Declaration (4th November 1741) to the effect that in the Federated States of Holland and Belgium, the Decree *Tametsi*, although promulgated under Philip II., was to be taken as not promulgated owing to the altered political and religious circumstances of the

country, and that consequently mixed marriages not celebrated before the Catholic priest were to be recognised as valid.

(*m*) This Declaration, known as the Benedictine Declaration, was extended to other countries, viz., to *Ireland* (in 1795), Hungary, Bavaria, Prussian Poland, Russia and Russian Poland, Canada, parts of United States, and certain Catholic districts in Germany and Rhine Provinces.

(*n*) On January 18th, 1906, with a view towards the simplification of the Canon law, in Germany, where the Tametsi and non-Tametsi area was much mixed, the present Pope issued a Bull ("*Provida*"), by which—

1. All marriages between Catholics in the German Empire must, under pain of nullity, be celebrated before the Catholic parish priest, as required by the Decree *Tametsi*.

2. Marriages between Protestants and *mixed marriages are recognised as illicit but valid.*

(*o*) In August 1907, as many questions were found to arise in many parts of the world as to domicile and as to who was the parish priest of the *contracting parties*, and as to delegation of his authority, the Holy See, with a view to meet these difficulties and to simplify the law, issued the Decree *Ne Temere*, by which Catholics can contract marriage before the Catholic parish priest of the *place*, and such celebration is required for Catholics under pain of *nullity*, whether the marriage be between Catholics or a mixed marriage.

(*p*) As only a few months before (January 1906) arrangements had been made with Germany, and a simplification of the law had already been provided under the Bull "Provida," the Holy See, in issuing the Decree *Ne Temere*, exempted from certain provisions as to mixed marriages "any particular place or country "for which the Holy See had otherwise "regulated" (*nisi pro aliquo particulari "loco aut regione aliter a S. Seda sit statu- "tum.*"—Decree *Ne Temere*, XI., 2).

(*q*) More recently (23rd February 1909) the exemption provided for the German Empire has been extended to the Kingdom of Hungary.

(10.) The motives of the Ne Temere Decree have been—

1. To simplify and unify the Catholic marriage law throughout the world, and obviate doubts and uncertainties implicated by the requirements of domicile.

2. To make certain the conditions of espousals, and thus prevent the evils complained of in many parts of the Catholic world, by which innocent girls have been deceived and misled by fictitious or merely verbal promises of marriage.

(11) The following are standard authors upon the subject:—

The New Matrimonial Legislation, by the Rev. T. Cronin, D.D., Vice-Rector of the English College, Rome. 8vo. pp. 340. (R. and T. Washbourne.)

De Forma Sponsalium ac Matrimonii post Decretum "Ne Temere." Rev. Arthurno Vermeersch, S.J., Professor I.C. Lovanii. 8vo. pp. 75. (Lethielleux, Paris.)

Commentarius im Decretum "Ne Temere." Rev. Ludovicus Wouters, C.S.S.R. 8vo. pp. 64. Amsterdam (C. L. Van Langenhuysen).

Le Mariage et les Fiançailles, Commentaire du Décret "Ne Temere," par l'Abbé Boudinhon, professeur à l'Institut Catholique de Paris. 8vo. pp. 132. (Lethielleux, Paris.)

Die Verlobungs-und Eheschliessungsform nach dem Dekrete "Ne Temere." Prof. Leitner. (Regensburg.)

Les Espousales y el Matrimonio Segum la novíssima disciplina. R. P. Ferreres. (Barcelona.)

Breve Commento della nuova legge sugli Sponsali e sul Matrimonio. Cardinal Gennari. (Rome.)

Die neuen eherechtlichen Dekrete "Ne Temere" und "Provida." R. D. Aug. Knecht. (Cologne.)

F. MOYES.

Cathedral Clergy House,
Westminster,
March 10th, 1911.

APPENDIX XV.

NOTE BY SIR JAMES CRICHTON-BROWNE.

In my memorandum submitted, I set forth that to recognise insanity of any kind or duration, as under any circumstances a valid ground for the disruption of the conjugal tie, would, in my opinion, be to encourage imprudence in marriage, conduce to instability of the matrimonial state, and to still further impair the sanctity of family life.

Insanity is simply a bodily disease, manifesting itself in mental derangement, and although by reason of the many disabilities it involves it interferes more than most other diseases with married life, the question is merely one of degree, and if it be once admitted that disabling disease of any kind is to justify divorce, it would, it seems to me, be impossible to continue to draw the line at diseases of the highest nervous centres. To allow any disease, no matter what its nature or extent, to annul a mutual contract explicitly or tacitly acknowledged hitherto by all who enter into it to be "for better and for worse, in sickness and in health," would be, it seems to me, to truckle to selfishness and to undermine those altruistic sentiments which have played so great a part in human progress, and to be in some measure a reversion to the ruthlessness of savage life. It would also be to lift divorce generally into a less objectionable position than it has hitherto occupied by associating it with infirmity, and so reducing the stigma which now attaches to it as being invariably connected with vice.

I do not suggest that anyone contemplating matrimony would make the deliberate calculation "if my "intended husband or wife should hereafter go mad I "can divorce him or her" would weigh. But the knowledge that in such an event divorce would be practicable must in some measure diminish the sense of responsibility with which marriage is and ought to be contracted. To provide remedies for the consequences of rash or inconsiderate conduct is to discount caution and self-control, and to allow divorce on the ground of insanity would be to withdraw one check on injudicious marriage, just in these cases in which in the interests of the community it is most desirable it should be maintained, where, for instance, a family predisposition to insanity exists on one side or on the other, or on both. So all who are capable of looking "before and after," that indissolubility of marriage is one of the guaranties that it will be undertaken with discretion. Just in proportion to the difficulty in setting it aside will, I think, be the circumspection with which its obligations will be undertaken. It is desirable by all possible means to increase care and forethought in marriage selection.

No doubt it is a grievous fate for any man or woman to be bound to a helpmate who is no longer helpful, in some cases to be linked to what is practically a corpse; but sadness and suffering wait on all forms of disease and are not without their compensations, for they often elicit and foster fine moral qualities. I have seen many instances of most touching and heroic devotion displayed by a wife towards a husband, or a husband towards a wife, stricken with life-long insanity. The faithfulness of sane towards insane spouses has been in my experience quite remarkable, and I do not believe that if divorce on account of insanity were legalised to-morrow it would be taken advantage of to any considerable extent. A few selfish, heartless, or indifferent persons might avail themselves of the opportunity of shaking off their bonds, but I am under the impression that the demand for divorce in insanity

has arisen not so much from those who suffer from existing limitations, but from doctrinaire reformers, and short-sighted philanthropists. And that social sentiment, amongst the humble classes at any rate would be against it and restrict resort to it.

It is unquestionably hard that a man of perhaps straitened means, or a wage earner, should have to contribute for years to the maintenance of an insane wife in an asylum, while he has also to pay for supplying her place in the household. But it would be hard, also, that he should be able by divorce to throw on the rates the cost of maintenance of his lawful wedded wife simply because she is suffering from incurable disease; and if divorce on the ground of insanity did not carry with it relief from maintenance charges, then I believe it would be but little resorted to by the humble classes. It is hard that a father perhaps in straitened circumstances has to contribute to the support of a child in a lunatic asylum, and that a son should have to contribute to the support of a father, but I have not heard it suggested that filial and paternal obligation should be wiped out by mental disease.

But whatever might be the relief, pecuniary or domestic, afforded to a few husbands and wives of chronic lunatics, what would be the effect of such legislation on their children where there are any? Disastrous I do not doubt. Children often remain tenderly attached to an insane parent, even after years of insanity, and would resent divorce as an indignity to that parent and to themselves. Constant suspicions as to the sane parents' intentions would be introduced into family circles, and when effect was given to these intentions, the family circle would sometimes be broken up. The position of the unoffending children would often be painful and intolerable, and the difficulty of the stepmother's rôle would be considerable. And what would be the effect of such legislation on the insane generally? Disastrous, again, I feel sure. It would deepen the shadow that already rests and must always rest on our lunatic asylums, and would add a new slur and pang to insanity, already opprobrious and distressing enough. Many lunatics, and especially recent and acute cases are hypersensitive, and the possibility of divorce in course of time would in many instances mingle with their delusions, and retard their recovery, if indeed it did not prevent it altogether. In case of divorce proceedings being taken on the ground of insanity it would, I presume, be necessary to serve notice on the lunatic from whom divorce was sought. In a number of cases the notice or citation would not be understood or attended, but there are many chronic lunatics who, although lunatic, would be able to grasp its meaning, and to them it would be an aggravation of their sufferings. Some of them entirely denying their own insanity would regard it as a wanton outrage. Although insanity is for the most part highly egotistic, some chronic lunatics retain undimmed their family affections, and to them the divorce notice would be humiliating, distressing, and cruel.

If insanity is to justify divorce then à fortiori, dipsomania and habitual drunkenness should do so, as in their etiology there is generally more of a voluntary element. In some of the United States drunkenness is accepted as a ground for divorce. The insurmountable difficulty must be to determine what constitutes habitual drunkenness? What frequency of intoxication amounts to it. I have known spells of habitual drunkenness with complete recovery. In many cases to divorce and disgrace the alleged habitual drunkard would be to extinguish saving grace and seal his or her ruin where that was not already sealed.

As regards divorce generally—apart from lunacy—I am not entitled to express an opinion any more than the man in the street, but I cannot help thinking that instead of allowing greater laxity in divorce and popularising it, the sound policy in the long run would be to abolish it altogether, and to hold men and women to their matrimonial bargains, however foolish or bad they may be. I am aware that that is not at present within the range of practical politics. The abolition would, in many cases, cause hardship and misery, but it is expedient that a few hundreds should suffer for the people. The trend of public opinion is, I suppose, at present, in the opposite direction, towards giving greater facilities for divorce, and granting it on grounds not hitherto recognised. That there is some lowering and materialization of the conception of marriage is, I think, indicated by the continuous decrease during the last 60 years of marriages solemnized in places of worship; and by the continuous increase of civil marriages in the office of the Superintendent-Registrar.

Increased facilities for divorce would, I fear, put the thought of it in the minds of married people when it would not otherwise occur to them on trifling differences and irritations. One becomes reconciled to the inevitable but is prone to fidget under terminable worries.

No doubt pitiful blunders are made in entering into the marriage contract, unforeseen difficulties are encountered, cruel desecrations of its vows and abandonment of its most hallowed duties occur. In many cases unspeakable individual relief would be afforded by the judicial severance of its bonds, and yet, from my point of view, it would be for the benefit of the community at large that it should be held inviolable. Nothing should, in my opinion, be done to weaken its obligations, or diminish its solemnity, for the easier the annulment is made, the more lightly will it be covenanted, the less scrupulous will be the observance of these conditions upon which its success and happiness depend. This has, I understand, been found to be the case in these American states, in which divorce has been made cheap and easy.

Ideals still count for much, and our object should be to idealise marriage, and raise it above the level of mere actual cohabitation, or a business co-partnery. It is a good old superstition that the wedding ring should never be taken off, as a symbol of fixity of tenure.

The total abolition of divorce would put an end to these suggestive and prurient newspaper reports of divorce cases which are admittedly pernicious in their effects.

APPENDIX XVI.

RETURNS SUPPLIED TO THE COMMISSION BY THE SECRETARY OF STATE FOR FOREIGN AFFAIRS AS TO LAW AND PRACTICE WITH REFERENCE TO THE PUBLICATION OF REPORTS IN CERTAIN FOREIGN COUNTRIES.

Royal Commission on Divorce and
Matrimonial Causes,
Winchester House,
21, St. James's Square,
January 12th, 1910.

SIR,

I HAVE been directed to ask whether you will be good enough to cause inquiries to be made in foreign countries as to "whether there are any, and if "so, what laws, regulations, or rules dealing with the "publication in the public Press of reports of pro-"ceedings in divorce and matrimonial causes," since the question of the publication in the Press of such reports in this country is one which has been referred to this Commission for consideration, and it is deemed of importance to know what are the provisions of other countries with reference thereto. Annexed is a list of those countries as to the laws of which I venture to suggest inquiries might be made, the result of which would be of considerable assistance to this Commission.

I am also desirous of obtaining the same information with regard to the various States of the United States of America. With regard to this Mr. Secretary Gladstone has recently supplied for the use of the Commission a "Special Report of the Census Office—Marriage and Divorce, 1867–1906," prepared by the Department of Commerce and Labour Bureau of the Census at Washington, and I apprehend that probably

that department would, on inquiries being made of it, be able and willing to supply the required information, and this appears to me to be the most convenient method by which it can be obtained. I am not, however, sure whether a request of this character should be addressed to you or to Mr. Secretary Gladstone. Perhaps you will be good enough to inform me whether the above suggestion appears feasible, and, if so, with whom I ought to communicate with the view of attaining that object.

I am, Sir,
Your obedient servant,
(Signed) H. GORELL BARNES,
Secretary.

The Under Secretary of State for Foreign Affairs,
Foreign Office,
Whitehall, S.W.

Austria-Hungary.	Norway.
Belgium.	Portugal.
Denmark.	Russia.
France.	Spain.
Germany.	Sweden.
Greece.	Switzerland.
Italy.	United States.
Netherlands.	

Foreign Office,
SIR, January 18th, 1910.

I AM directed by Secretary Sir E. Grey to acknowledge the receipt of your letter of the 12th instant, requesting that inquiries may be made in certain foreign countries as to "whether there are any, "and if so, what laws, regulations, or rules dealing "with the publication in the public Press of reports of "proceedings in divorce and matrimonial causes."

In reply, I am to inform you that, in accordance with your request, His Majesty's representatives at Vienna, Brussels, Copenhagen, Paris, Berlin, Athens, Rome, The Hague, Christiania, Lisbon, St. Petersburg, Madrid, Stockholm, and Berne have been instructed to furnish a report on any laws, regulations, or rules concerning this subject which may exist in the country to the Government of which they are accredited.

I am to add that His Majesty's Ambassador at Washington has been instructed to inquire of the United States Government whether the information desired by the Royal Commission can be obtained with regard to the various States of the Union.

I am, Sir,
Your most obedient humble servant,
(Signed) W. LANGLEY.

The Secretary,
Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

AUSTRIA.

Consular, No. 3.
SIR, Vienna, January 26th, 1910.

WITH reference to your circular despatch of this series of the 18th instant, I have the honour to report that, according to the law of Austria, all divorce and matrimonial causes must take place in public, and the proceedings may consequently be published in the Press.

Exceptions to this rule are, however, provided for in the following paragraph (section 172 of the Law No. 113 of August 1, 1895), which runs as follows:—

"The proceedings are not to be conducted in public, if morality or public order appear to be endangered thereby, or if there is reasonable ground for apprehension that publicity may be misused with the object of disturbing the proceedings or of interfering with the conduct of the case.

"The Court may moreover on the appeal of one only of the parties exclude the proceedings from publicity if private family affairs have to be proved or discussed in order to settle the dispute.

"Publicity may be excluded for the whole or part of the proceedings; but in every case the verdict must be given in public. In so far as publicity is excluded from the proceedings the publications of those proceedings is also forbidden."

It will thus be seen that the advisability of conducting any proceedings in private lies within the jurisdiction of the Court. The publication in the Press of any such proceedings is punishable under section 309 of the Austrian Penal Code by imprisonment from one to three months. Any proceedings not conducted in private may be published without restriction in the Press.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) FAIRFAX L. CARTWRIGHT.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

BELGIUM.

Consular, No. 7.
SIR, Brussels, January 20th, 1910.

WITH reference to your circular despatch of this series (1436) of the 18th instant with regard to the publication in the public Press of reports of proceedings in divorce and matrimonial causes, I am informed by the Legal Adviser to His Majesty's Legation that there are no special laws or regulations in Belgium on this subject. The Press being free, any journalist may report what is said in *open* court, though if the report is incorrect the damaged party can bring an action against the paper. As a rule the Belgium Press does not report divorce cases unless they present a real and special public interest, and even then the names are not mentioned. The witnesses in Belgian divorce cases are heard *in camera*, and therefore no report of their evidence can get into the Press unless a lawyer gives it, which is entirely against the etiquette of the Bar, and there is believed to be no instance of such a thing happening.

I should point out that divorces are frequently granted in Belgium for incompatibility of temper or by mutual consent, and these cases being undefended give no opportunity for Press reports.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) ARTHUR H. HARDINGE.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

DENMARK.

Consular, No. 5.
SIR, Copenhagen, February 21st, 1910.

WITH reference to your circular despatch in this series (1436/10) of the 18th ultimo, requesting information as to whether any "laws, regulations or "rules dealing with the publication in the public "Press of reports of proceedings in divorce and "matrimonial causes" exist in Denmark, I have the honour to enclose, herewith, copy of a note which I have received from Monsieur Scavenius, stating that there are no laws or regulations of that nature in Danish legislation.

His Excellency proceeds to explain that in Denmark matrimonial causes are very seldom carried before the courts of law, divorces being pronounced by the administrative authorities.

I have the honour to be, with the highest respect.
Sir,
Your most obedient, humble servant.
(Signed) ALAN JOHNSTONE.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

Enclosure in Sir A. Johnstone's No. 5 Consular of February 21st, 1910.

Copenhague, le 19 février 1910.

MONSIEUR LE MINISTRE,

PAR sa note en date du 23 janvier dr. M. Vaughan a exprimé le desir de savoir si en Danemark il y a des règles et prescriptions à l'égard de la publication dans la presse des rapports sur la procédure dans les causes matrimoniales.

En réponse, j'ai l'honneur de vous faires connaître qu'il n'existe pas de règles ou prescriptions de cette nature dans la legislation danoise. Cela s'explique par le fait que les litiges matrimoniaux ne sont portés devant les tribunaux que très rarement.

En effet, les divorces sont soumis—pour la plupart—à la décision administrative et les séparations de corps et de biens ne trouvent leur solution que par cette voie. En outre est à remarquer que dans les rares cas où une affaire de divorce est portée devant les tribunaux, la procédure n'est orale qu'à la cour suprême, et que cette cour est autorisée à décréter le huit-clos lorsqu'elle le juge convenable.

Veuillez agréer, &c.,

(Signed) ERIK SCAVENIUS.

Sir Alan Johnstone,
Ministre de Sa Majesté Britannique.

FRANCE.

Consular, No. 5.

SIR, Paris, January 27th, 1910.

IN compliance with the instructions contained in your circular despatch of this series of the 18th instant (1436/10), I have the honour to transmit to you herewith a memorandum in regard to the laws and regulations in force in France in regard to the publication in the public Press of reports of proceedings in divorce and matrimonial cases.

I have the honour to be, with great truth and respect,

Sir,

Your most obedient, humble servant,

(Signed) FRANCIS BERTIE.

The Right Hon. Sir Edward Grey, Bart, M.P.,
&c. &c. &c.

MEMORANDUM.

Publication in the Press of Proceedings in Divorce and Matrimonial Causes in France.

The publication in the Press of proceedings in divorce causes is prohibited by Article 239 of the Civil Code, which states that:

> "The publication in the Press of proceedings in actions for divorce is prohibited under penalty of a fine of from Fr. 100 (4*l.*) to Fr. 2,000 (80*l.*) as provided by Article 39 of the Law of July 30, 1881."

This is the principal law relating to the Press, and Article 39 is worded as follows:—

> ". . . . In all civil causes the Courts and Tribunals may prohibit the report of the proceedings. Such prohibition shall not be applicable to the judgments, which may always be published. It is similarly forbidden to report the private deliberations of the jury or of the Courts and Tribunals. Every infraction of these provisions is punishable by a fine of from Fr. 100 to Fr. 2,000."

This prohibition is made applicable to actions for separation by Article 307 of the Civil Code.

In either case the publication is permitted of all judgments, either preparatory, interlocutory or on the merits, and it has been held that it is also permissible to publish such portions of the pleadings as may be of interest from a juridical point of view.

Applications for the conversion of judgments of separation into judgments of divorce are argued in Chambers to which the public is not admitted.

The Tribunal in whose jurisdiction publication has taken place is alone competent to deal with infractions of the laws above-mentioned.

Paris, January 27th, 1910.

GERMANY.

Consular, No. 14.

SIR, Berlin, March 2nd, 1910.

WITH reference to your circular despatch (1436/10) of the 18th January last, relative to the regulations in force in Germany dealing with the publication in the public Press of reports of proceedings in divorce and matrimonial causes, I have the honour to inform you that I have received a Note Verbale from the Imperial Foreign Office in reply to the enquiry which I addressed to them on the subject.

The Note Verbale states that, in the absence of special Imperial legal regulations, Press reports of Divorce Court proceedings are only subject to the general provisions laid down in the Criminal Code (*Strafgesetzbuch*). In this connection section 184*b* may be noted, by which a fine not exceeding 300 marks or imprisonment not exceeding six months is inflicted for the publication of legal proceedings which, for the sake of public morality, have been held *in camera*, or for publishing from official documents connected with these proceedings anything which may be of a vexatious nature.

I have the honour to be, with the highest respect,

Sir,

Your most obedient, humble servant,

(Signed) W. E. GOSCHEN.

The Right Hon. Sir Edward Grey, Bart., M.P.,
&c. &c. &c.

GREECE.

Consular, No. 4.

SIR, Athens, February 15th, 1910.

IN reply to your circular despatch of this series of the 18th ultimo, inquiring "whether there are, any, "and if so, what laws, regulations, or rules dealing with "the publication in the public Press of reports of "proceedings in divorce and matrimonial causes," I have the honour to report that there are no such laws, regulations, nor rules in Greece.

Article 14 of the Constitution, however, provides that any person has the right to publish his opinions . . . . in the Press, provided only that he observe the laws of the State, while Article 21 of the Press Law of the 6th/18th of September 1833 prohibits the publication of anything hurtful to religion or to public morals.

It would seem that it would thus be possible under the combined provisions of the Constitution and the Press Law of 1833 to suppress the publication of reports of proceedings in divorce cases on the ground of their being harmful to public morals, but I may state that in the course of my long experience in this country I cannot remember ever having seen such reports in the newspapers.

I have the honour to be, with the highest respect,

Sir,

Your most obedient, humble servant,

(Signed) F. ELLIOT.

The Right Hon. Sir Edward Grey, Bart., M.P.,
&c. &c. &c.

ITALY

Consular, No. 7.

SIR, Rome, April 4th, 1910.

WITH reference to your circular despatch consular of January 18th, I have the honour to enclose herewith a translation of a note which I have received from the Italian Government containing the desired information with regard to the laws and regulations dealing with the publication in the Press of proceedings in matrimonial causes.

The information has reference only to causes for judicial separation, as there is no divorce in Italy.

I have the honour to be, with the highest respect,

Sir,

Your most obedient, humble servant,

(Signed) RENNELL RODD.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

(Translation.)

Rome, March 22nd, 1910.

MONSIEUR L'AMBASSADEUR,

WITH reference to the note of January 21st last, in which your Excellency desired from me information in regard to the rules which in Italy govern the publication of reports of proceedings in suits for legal separation between married persons, I have the honour to make the following communication :—

It is necessary first of all to point out that a distinction is drawn in regard to proceedings with a view to personal separation between married persons, according as to whether it is a question of voluntary separation (Civil Code, Article 158; Code of Civil Procedure, Article 811), or of contentious proceedings (Civil Code, Article 149 and following; Code of Civil Procedure, Articles 806–810). In the case of both these classes of proceedings, the president of the tribunal has to hear the parties and endeavour to reconcile them; this takes place without any publicity, the parties being forbidden even to invoke the assistance of solicitors or of counsel. If a reconciliation is effected a procès verbal of the same is drawn up and signed by the parties concerned, the president, and the clerk. Otherwise, if it is a question of voluntary separation, the failure of the attempt at reconciliation is recorded in the procès verbal, and the tribunal, sitting *in camera*, is called upon to ratify the separation mutually agreed to. Only in the case of contentious proceedings, after the effort to reconcile has failed, does the president remand the parties to a public hearing of the court.

Consequently there is no special regulation in Italy governing the publication in newspapers of reports of separation proceedings. A provision of a general nature (Article 10 of the Edict regarding the Press, 26th March 1848, No. 695) only forbids the publication of trials before magistrates or courts, which have taken place with closed doors in virtue of Article 52 of the Code of Civil Procedure, which provides that "when publicity may be dangerous to "public order or morals by reason of the nature of "the case . . . . the judicial Authority, on the request "of the public prosecutor or of its own motion, order "the discussion to take place with closed doors. The "measure is announced in public audience, and "inserted, together with the reasons for its adoption, "in the procès verbal of the hearing." This provision, however, concerns the discussion and not the sentence, which has to be read in public audience (Article 366 of the Code of Civil Procedure) and of which a copy can be obtained even by those who are not parties to the suit (Code of Civil Procedure, Article 913 and Article 916). Consistently with this provision, Article 72 of the general regulations for the Archives of State (Royal Decree of September 9, 1902, No. 445) states that "the sentences and rulings of "magistrates . . . . are public, whatever be their "nature."

As regards documents produced by the parties before a magistrate, Article 32 of the above-mentioned Press Edict provides that "no action shall lie in "respect of the publication of documents produced "before the Courts. The magistrate or Court, pro-"nouncing on the merits of the case, can order the "suppression of harmful documents and can declare "the guilty party responsible for damages." Analogously it is laid down by the Code of Civil Procedure, Article 63, that "the judicial Authority can, according "to the circumstances, order, on its own initiative, "the suppression or cancellation of documents offensive "or contrary to public order or morals."

I avail, &c.

(For the Minister),

(Signed) BOLLATI.

NETHERLANDS—LUXEMBURG.

Consular, No. 6.

SIR, The Hague, February 16th, 1910.

UPON receipt of your circular despatch (1436/10) of this series of the 18th ultimo, I did not fail to apply to the Netherland and Luxemburg Governments for information as to the provisions which might exist in the Kingdom and Grand Duchy respectively regarding regulations or rules dealing with the publication in the Press of reports of proceedings in divorce and matrimonial causes.

Monsieur de Swinderen informs me, in reply, that no provisions exist in the Netherlands of the nature indicated. Matters concerning divorce and separation are dealt within closed doors, so that it is impossible to publish reports of the proceedings in the Press.

In the Grand Duchy of Luxemburg, too, Monsieur Eyschen states, no law, regulation, or statute exists regarding the publication of such matters in the Press.

I have the honour to be, with the highest respect,

Sir,

Your most obedient, humble servant,

(Signed) GEORGE W. BUCHANAN.

The Right Hon. Sir Edward Grey, Bart., M.P.,

&c. &c. &c.

NORWAY.

Consular, No. 3.

SIR, Christiania, March 3rd, 1910.

I HAVE the honour to transmit to you herewith translation of a Memorandum which I have received from the Norwegian Government supplying the information called for in your circular despatch of this series (1436) of January 18th last, on the subject of the laws, regulations, or rules in force in Norway dealing with the publication in the public Press of reports of proceedings in divorce and matrimonial causes.

I have the honour to be, with the highest respect,

Sir,

Your most obedient, humble servant,

(Signed) ARTHUR HERBERT.

The Right Hon. Sir E. Grey, Bart., M.P.,

&c. &c. &c.

Enclosure in Sir A. Herbert's No. 3 Consular of March 3rd, 1910.

MEMORANDUM.

On Norwegian Regulations, &c., regarding the Publication in the Press of Reports on Matrimonial and Divorce Causes.

No special regulations exist regarding such publication; in this country divorces are, as a rule, granted by Royal licence. According to the rescript of August 19, 1735, cfr. the High Court Law of September 12, 1818, Para. 8, civil cases in general are, however, subject to the rule that the trials are to be held with closed doors if the matter can give rise to "scandal" or "offence." In Para. 11 of the new law of August 20, 1909, regarding facilities for the dissolution of marriages, it is also stated that trials of such cases shall always be held with closed doors. A further rule exists with regard to all civil cases, according to which none but persons concerned shall have access to the documents.

In the second section of Para. 128 in the Bill regarding Courts of Justice which has this year been laid before the Storthing, it is determined that trials of matrimonial causes (*i.e.*, causes dealing with the invalidity, the continuance, or the dissolution of marriages) shall be held with closed doors.

Para. 131 also contains the following rule: "If a "trial is held with closed doors and the Court should "consider it advisable that the proceedings or any "portion of them should for special reasons be kept "secret until further notice or altogether, the Court "shall enjoin those present, to this effect."

PORTUGAL.

Consular, No. 4.

SIR, Lisbon, December 6, 1910.

WITH reference to your Consular despatch (41050/1910) of the 16th ultimo, I have the honour to state that I have not succeeded in obtaining complete information as to the rules and regulations which deal with the publication in the Portuguese press of reports of proceedings in divorce and matrimonial causes.

Senhor Villaça, who was Minister for Foreign Affairs in Februafy last, returned a reply to my enquiries which seemed to contain a contradiction, and I have not yet been able to clear up some doubtful points. I have now addressed a note to Senhor Bernardino Machado, who will, I hope, furnish without delay the explanations for which I have asked.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
The Right Hon. (Signed) F. H. VILLIERS.
Sir E. Grey, Bart., M.P.,
&c., &c., &c.

Consular, No. 2.

SIR, Lisbon, February 25, 1911.

I REGRET to state, with reference to my despatch, No. 4 Consular of December 6, that I have not been more successful with Senhor Bernardino Machado than with his predecessors in my endeavour to obtain clear information in regard to the rules and regulations respecting publication in the Portuguese press of proceedings in divorce and matrimonial causes. I understand that the Royal Commission have practically concluded their labours and do not intend to receive further evidence, so I imagine that it is not worth while to pursue the matter further with the Portuguese Government.

The copies of correspondence which I enclose show what has passed. Notes are annexed upon the various Articles of the Codes, &c., to which allusion is made.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
The Right Hon. (Signed) F. H. VILLIERS.
Sir Edward Grey, Bart., M.P.,
&c., &c., &c.

Enclosure No. 1 in Sir F. Villiers' No. 2 Consular, of February 25, 1911.

His Britannic Majesty's Legation,

YOUR EXCELLENCY, Lisbon, February 7, 1910.

I HAVE the honour, by direction of Sir Edward Grey, to inform you that the Royal Commission on Divorce and Matrimonial Causes have expressed a desire that enquiries should be made in certain foreign countries as to whether there are any, and if so what, regulations or rules dealing with the publication in the press of reports of proceedings in divorce and matrimonial causes.

I am aware that no law of divorce is contained in the Portuguese Code, but it occurs to me that provision may be made with regard to the publication in the Portuguese press of divorce proceedings instituted in countries other than Portugal, and I shall be much obliged, should this be the case, if Your Excellency will furnish me with copies of the regulations in force.

I avail, &c.,
His Excellency (Signed) F. H. VILLIERS.
Senhor Eduardo Villaça,
&c., &c., &c.

Enclosure No. 2 in Sir F. Villiers' No. 2 Consular of February 25, 1911.

(Translation.) Ministry for Foreign Affairs,

YOUR EXCELLENCY, Lisbon, February 22, 1910.

IN reply to the note which you were good enough to address to me on the 7th instant, I have the honour to inform Your Excellency that the Portuguese Code of Civil Procedure provides for secrecy with regard to the ground of action in causes for matrimonial separation; but no provision is made as regards the publication in the press of any facts or circumstances connected with such actions instituted either here or abroad except in cases of defamation, calumny or abuse, which are punishable under the Penal Code and the law of the 11th of April 1907.

I avail, &c.,
The Hon. (Signed) EDUARDO VILLAÇA.
Sir Francis H. Villiers,
&c., &c., &c.

Enclosure No. 3 in Sir F. Villiers' No. 2 Consular of February 25, 1911.

(Translation.)

In continuation of the note of the 22nd of February last, the Minster for Foreign Affairs has the honour to inform Sir Francis Villiers that the legal provisions which in this kingdom enforces secrecy with regard to the grounds of action in causes for matrimonial separation, are contained in Articles 64, 67, 461, 464, 468 and 470 of the Code of Civil Procedure; and cases in which publicity may involve criminal accusation, defamation, calumny or abuse are dealt with in Articles 407 to 412 and 414 to 420 of the Penal Code, to which reference is made in Article V. of the law of the 11th of April 1907.

Lisbon, April 1, 1910.

Enclosure No. 4 in Sir F. Villiers' No. 2 Circular of February 25, 1911.

His Britannic Majesty's Legation,

YOUR EXCELLENCY, Lisbon, December 6, 1910.

ON the 7th of February last I informed Senhor Villaça, in accordance with instructions received from Sir Edward Grey, that the British Royal Commission on Divorce and Matrimonial Causes had expressed a desire that inquiries should be made in certain foreign countries as to whether there are any, and if so what, regulations or rules dealing with the publication in the press of reports of proceedings in such causes.

I was aware, of course, that at that time no law of divorce was contained in the Portuguese Code, but it occurred to me that regulations dealing with the publication in the Portuguese press of divorce proceedings instituted in countries other than Portugal might be in force, and I requested, if this were the case, to be furnished with copies of the regulations.

Senhor Villaça replied on the 22 of February that the Portuguese Code of Civil Procedure provided for secrecy with regard to the ground of action in causes for matrimonial separation, but that no provision was made as regards the publication in the press of any facts or circumstances connected with such actions instituted either here or abroad except in cases of defamation, calumny, or abuse, which were punishable under the Penal Code and the law of April 11th, 1907.

I pointed out to Senhor Villaça that this answer apparently contained a contradiction—the Code provided for secrecy, though no provision was made, except the risk of penalty, as regards the publication of facts or circumstances in the press—but I was unable, in spite of repeated requests, to obtain any more precise information than that contained in a note of the 1st of April, which called my attention to various Articles in the Civil and Penal Codes.

I have now received a despatch from Sir Edward Grey referring to my instructions, and I must therefore address Your Excellency on this matter. The particulars with which I would beg to be furnished are:—

1. Whether causes for matrimonial separation are always heard in camera, or whether the public and representatives of the press are admitted.

2. Whether the Codes provide any means of enforcing secrecy (*a*) as to proceedings in court or as to facts and circumstances if the public and the press are admitted, or (*b*) as to facts and circumstances which may by any means come to the knowledge of the press, or, whether the newspapers are at liberty in any case to publish facts and circumstances of

which they may become cognizant, subject only to the risk of penalty for defamation, calumny, or abuse, under the Penal Code and the Press Law.

I avail, &c.

(Signed) F. H. VILLIERS.

His Excellency
Senhor Bernardino Machado.
&c., &c., &c.

Enclosure No. 5 in Sir F. Villiers' No. 2 Consular of February 25, 1911.

His Britannic Majesty's Legation,
Lisbon, January 14, 1911.

YOUR EXCELLENCY,

I OBSERVE that the decree respecting the law of marriage published in the Diario do Governo of the 27th ultimo prohibits in Article XXIX. the publication of the evidence in proceedings for nullity or annulment of marriage, with the exception of the sentence, and prescribes certain penalties for offences against this prohibition.

I shall be glad if Your Excellency will let me know whether this furnishes a complete reply to my note of the 6th ultimo, and to my previous communications respecting the information required by the British Royal Commission on Divorce and Matrimonial Causes. I venture to ask for an early reply, as my original enquiry on this matter was made nearly a year ago.

I avail, &c.

(Signed) F. H. VILLIERS.

His Excellency
Senhor Bernardino Machado,
&c., &c., &c.

Enclosure No. 6 in Sir F. Villiers' No. 2 Consular of February 25, 1911.

(Translation.) Ministry for Foreign Affairs,
Lisbon, January 28, 1911.
(Received February 14, 1911.)

YOUR EXCELLENCY,

I HAVE before me your notes of the 6th of December last and 14th instant, in which Your Excellency, in referring to previous correspondence between your Legation and this Department of State, expresses the desire to have fuller information respecting the legal provisions by which in this country secrecy is observed with regard to proceedings in cases for matrimonial separation, divorce and annulment of marriage.

As regards proceedings for separation—both of persons and property—the provisions of the Code of Civil Procedure, Articles 64, 67, 461, 464, 468 and 470, are applicable, and these, in the case of divorce, correspond to Articles 8 and 19 of the decree of November 3rd, 1910.

In view of the provisions of Article 5 of the Penal Code, the penalty prescribed in Article 29 of the decree No. 1 of December 25th, 1910, is applicable only in cases of proceedings for nullity or annulment of marriage.

The application of the penal law and of the decree of the 28th of October 1910, regarding liberty of the press, to cases of publication of evidence in divorce proceedings or in cases of separation of persons and property, depends on the circumstances of the case which the tribunals alone are competent to determine.

I avail, &c.

(Signed) BERNARDINO MACHADO.

The Hon. Sir Francis H. Villiers,
&c., &c., &c.

Code of Civil Procedure.

Article 64.—The registrar or the secretary may issue certified copies of all judicial acts and statements without the previous sanction of the judge.

§ 1. Exception is made with regard to:—

1. . . . . .

2. Procès verbaux in actions for matrimonial separations of persons and division of property, of which only certified copies may be taken, pursuant to the judge's order, of such parts as relate to alimony, as well as of the report of the decision of the family council and of the sentence approving such decision, or of the judgment of the action or any of its points.

Article 67.—Registrars or secretaries shall not refuse the examination by any person at the registrar's office of procès verbaux either pending or on which judgment has been pronounced.

§. An exception is made in the case of procès verbaux for separation; these may only be shown to the parties thereto and their attorneys; . . . . . .

**Article* 461.—Cases shall be tried in camera, and the following precedure shall be observed:—†

. . . . . .

Article 464, *sub-clause* 3.—The depositions of the parties, the examination of witnesses, and the discussions shall be held in camera.

Article 468.—Final decisions shall be published and announced in the manner provided for in Article 448, the names and residences of the parties, whether the separation was authorised or not, and what effect it has produced on the property, only being declared.

(Sub-article of Article 448 states that the notices to be published shall only declare the names and residences of the parties and the nature of the action, the grounds therefor being omitted.)

Article 470.—The action having been definitely decided, all depositions which do not deal with alimony shall be destroyed in the presence of the judge and Crown prosecutor, an act thereof being drawn up to be kept with the procès verbal.

Penal Code.

Articles 407 to 412 and 414 to 420 provide generally for penalties in cases of criminal accusation, &c., and do not refer specially to matrimonial causes.

Law of April 11th, 1907.

This is the press law passed in the time of Senhor João Franco. Article V. lays down certain offences, among which are defamation, calumny, &c.

Decree of November 3rd, 1910.

A summary of this law instituting divorce was forwarded in my despatch, No. 69, of November 19th, 1910.

Article VIII. provides that the sentence shall not describe the nature of the case or the evidence, but shall mention without comment the names of the parties, the causes of action, the law applicable to the case, and the grounds of decision.

Article XIX. provides that the sentence shall be published in the Official Gazette and in local papers.

Decree of December 25th, 1910.

A translation of this Decree was forwarded in my despatch, No. 3, of January 11th. Article 29 prohibits the publication of the evidence in the proceedings for nullity or annulment of marriage with the exception of the sentence.

Penal Code.

The following is a translation of Article V.:—

"Any fact, consisting of an act or of an omission, shall not be considered as a criminal offence until it has been qualified as such by a previous law.

Decree of October 28th, 1910.

This is the new press law, which re-enacts more or less the penalties for defamation, &c., prescribed in the former law.

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* This article and the three following Articles relate to separation cases.

† The remainder of the Article refers to procedure only.

PORTUGUESE DECREE OF DECEMBER 25, 1910.

(Translation.)

Article 29.—The publication in any way of the evidence in the proceedings for nullity or annulment of a marriage, with the exception of the decision, is hereby prohibited, and the offenders will be subject to the penalties mentioned in Articles 407* and 410† of the Penal Code and in the decree of October 28, 1910, as the case may be.

RUSSIA.

Consular, No. 4.

SIR, St. Petersburg, January 27th, 1910.

ON the receipt of your circular despatch (1436/10) of this series of January 18th last I caused inquiry to be made of the Legal Adviser of this Embassy with regard to the laws, regulations or rules existing in Russia on the subject of the publication in the Press of reports of proceedings in divorce and matrimonial causes.

I am informed that the Russian Penal Code (Article 1038 (1), Vol. XV. of the "Corps des Lois") and the Press and Censure Statute (Article 78, Vol. XIV. of the "Corps des Lois") forbid the publication of all reports of proceedings which are conducted "*in camera.*" As the proceedings of the Ecclesiastical Consistories, to whom jurisdiction in divorce cases is assigned, are conducted "*in camera,*" it follows that the publication of any details in divorce proceedings constitutes a penal offence.

With regard to other matrimonial cases, it is enacted by Article 325 (1) of the Code of Civil Procedure that suits for the maintenance of illegitimate children should be held "*in camera.*"

Lastly, in virtue of Article 325 of the Code the tribunal may decide that proceedings be held in "*in camera*" if it considers that publicity would be prejudicial to religion, order, and public morals, and according to Article 326 the same procedure may be followed if the two parties to the suit express a desire to that effect, and if the tribunal consider it admissible.

In all these cases the fact of proceedings being held "*in camera*" makes it illegal for the public Press to publish any details of them.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) A. NICOLSON.

The Right Hon. Sir Edward Grey, Bart., M.P.,
&c. &c. &c.

SPAIN.

Consular, No. 2.

SIR, Madrid, January 28th, 1910.

I DULY received your circular consular of the 18th instant inquiring whether there are any, and if so, what laws, regulations, or rules dealing with the publication in the public Press of reports of proceedings in divorce and matrimonial causes.

In reply, I have the honour to inform you that civil divorces are very rare in Spain, and that there are no special rules regarding the publication of proceedings connected with them. Generally speaking, the newspapers may publish anything they hear in the public sessions at the Law Courts, but if the president of the court thinks that anything not fit for publication is about to take place, he may close the court and further proceedings remain secret.

In Ecclesiastical Courts divorce cases are generally heard with closed doors.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) MAURICE DE BUNSEN.

The Right Hon. Sir Edward Grey, Bart., M.P.,
&c. &c. &c.

SWEDEN.

Consular, No. 6.

SIR, Stockholm, February 24th, 1910.

WITH reference to your circular despatch of this series of the 18th ultimo, I have the honour to transmit to you herewith a translation of a Memorandum on the rules and regulations in force in Sweden respecting the publication of proceedings in divorce and matrimonial causes, which has been furnished me by the Swedish Government.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) CECIL SPRING RICE.

The Right Hon. Sir E. Grey, Bart., M.P.

Duplicate Enclosure in Sir C. Spring Rice's
Consular, No. 6.

MEMORANDUM.

(Translation.) Stockholm.

According to section 2, paragraph 4, of the statute in force respecting the liberty of the Press, it is expressly allowed, subject to the exceptions and conditions hereinafter mentioned, that all proceedings, protocols and decisions, of whatever designation or character they may be, in any trial coming before the Swedish courts, may be published in the general Press. In the same provision it is further laid down that the courts shall give information without delay concerning the proceedings in question to anyone who asks for it; and that everybody, whether he is concerned in the trial or not, shall have free access to the archives of the court so as to be able to take a copy of the proceedings. Copies of the latter may also be obtained on payment of a fee.

With regard to the restrictions which exist to the right to publish the proceedings in question, the following should be noted.

A party to a trial has a full right, before sentence or judgment is pronounced, to publish according to his own choice the petition, complaint, and the accusation. But it is incumbent on such party to make public at the same time, by means of the Press, the declarations of the opposing party together with the pronouncement of the court thereon and the opinions of the individual judges, so that all that is necessary for a full comprehension of the case itself, of its course and result, may come to the knowledge of the public.

Anyone who has a case pending in court has a right to have a report printed—called the "species facti," *i.e.*, a short and accurate written account of the nature and course of the trial. But he must confine himself to what is true and proper.

It is further laid down that the protocols and proceedings in cases under the Criminal Act which have been settled by compromise, among which in some respects are included divorce cases, may not be published as long as any of the parties are alive, without their consent, or, if the parties are dead, for 50 years after their death.

Anything in such proceedings which "is of a disgusting character" or is highly offensive to modesty, or which concerns persons who are not parties to the case and is unreasonably offensive or defamatory, may not be published, unless it is so ordered by the judge on the ground that it is necessary to throw light on the affair in question.

Breach of these regulations is punished by a fine.

The above regulations apply to the publication of the judge's sentence in the trial, either in the Press or otherwise.

The law contains no provisions concerning the publication of reports on the course of the trial. But in common with other publications and in accordance with the regulations respecting the freedom of the Press, such reports must not overstep the bounds of decency and morality.

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* Four months' imprisonment and fine.
† Two months' imprisonment and fine.

SWITZERLAND.

No. 9.

SIR, Berne, February 5th, 1910.

IN reply to your circular (1436/10) of the 18th ultimo, I have the honour to transmit herewith a copy of a note from the Federal Government stating that no special regulations exist in Switzerland dealing with the publication in the public Press of proceedings in divorce and matrimonial causes, but explaining how in many of the cantons causes of this nature are not heard in public.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) H. O. BAX-IRONSIDE.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

Enclosure in Mr. Bax-Ironside's No. 9 of February 5th, 1910.

Berne, le 3 février 1910.

MONSIEUR LE MINISTRE,

EN réponse à la note du 24 janvier dernier, nous avons l'honneur de faire savoir à Votre Excellence qu-il n'existe en Suisse, à notre connaissance, aucunes dispositions spéciales concernant les *comptes-rendus dans la presse des débats judiciares sur les affaires de divorce.* Mais ces comptes-rendus sont tout naturellement restreints par le fait qu'en bien des endroits les débats judiciares sur les affaires de cette nature ne sont pas publics. Tel est le cas dans les cantons suivants:

- Zürich (loi concernant l'administration de la justice zuricoise du 19 décembre 1874, para. 144, 2e alinéa), pour les actions en divorce et en paternité;
- Glaris (code de procédure civile du 5 mai 1895, para. 144), pour les actions en paternité, pour celles en indemnité pour rupture de promesse de mariage et pour celles en divorce;
- Bâle-ville (loi sur l'organisation judiciare du 1er février 1875, para. 34, 2e alinéa), pour les actions en divorce et en paternité;
- Schaffhouse (code de procédure civile du 25 juin 1869, para. 61), pour les actions en divorce et en paternité;
- Appenzell Rh. Ext. (constitution cantonale art. 68), pour les procès en divorce;
- St. Gall (loi concernant l'administration de la justice civile du 31 mai 1900, art. 105), pour les actions en divorce et en paternité;
- Thurgovie (code de procédure civile du 1er mai 1867, para. 130), pour les procès en paternité et en divorce.

Dans le canton d'Argovie, suivant le code de procédure civile du 12 mars 1900, le huis-clos doit être prononcé sur la demande d'une des parties, lorsqu'il s'agit de contestations entre époux ou entre parents et enfants; dans le canton du Valais, le huis-clos doit, en pareil cas, être prononcé sur la demande des deux parties (code de procédure civile du 30 mai 1856, art. 659).

En outre, dans tout les cantons on a pour principe d'exclure la publicité des débats dans les procès qui pourraient offenser la morale publique.

Veuillez, &c.,
Au nom du Conseil Fédéral Suisse:
Le président de la Confédération,
(Signed) COMTESSE.
Le chancelier de la Confédération,
(Signed) SCHATZMANN.

Son Excellence Monsieur H. O. Bax-Ironside,
&c. &c. &c.

Consular, No. 4.

SIR, Berne, February 11th, 1910.

WITH reference to my despatch Number 3, Consular, of the 5th instant, enclosing copy of a note from the Swiss Government giving a list of the cantons in which provisions exist for preventing matrimonial causes being heard in public, I have the honour to report that I have received a further note informing me that by the marriage law of the Grisons of March 1, 1876, III. 2, divorce cases are heard *in camera* ("à huit-clos") in that canton.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) H. O. BAX-IRONSIDE.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

UNITED STATES OF AMERICA.

Consular, No. 18. British Embassy,

SIR, Dublin, N.H., June 20th, 1910.

WITH reference to your despatch of this series of January 18th last, I have the honour to transmit herewith a short summary of such laws as restrict in any way the rights of the Press to publish the proceedings in divorce and matrimonial cases.

It will be seen that these are very few, and indeed the general feeling throughout the country is antagonistic to any interference with the so-called liberties of the Press such as would ensue from a restriction of the right to publish divorce proceedings, except in the interests of public decorum and good morals. At least this is what the Press endeavour to convey.

An illustration of this feeling was furnished recently when a case, tried quite legally and properly in New York, in which two very wealthy and prominent persons sought and obtained a divorce from one another, was conducted with such secrecy without either party being even present that an outcry was raised by the newspapers concerning the privileges of the wealthy classes even in matters of this kind, where the power of their wealth was suspected as the principal agency in securing a private "washing of dirty linen."

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) JAMES BRYCE.

The Right Hon. Sir Edward Grey, Bart., M.P.
&c. &c. &c.

Publication in the Public Press of Proceedings in Divorce and Matrimonial Cases.

There are practically no laws denying to the Press in any of the States of this country the right to publish such accounts of divorce proceedings as they may wish to print, with the exception of such statutes as have been enacted to prevent offences against the laws of decency and of libel.

Such restrictions as exist are set forth below:—

In the State of New York there is a regulation to the following effect:—

"Section 4, Judiciary Law: Sitting of courts—to be public. The sittings of every court within this State shall be public and every citizen may freely attend the same, except that in all proceedings and trials in cases for divorce, on account of adultery, seduction, abortion, rape, assault, with intent to commit rape, criminal conversation and bastardy, the court may, in its discretion, exclude therefrom all persons who are not directly interested therein, except jurors, witnesses, and officers of the court.

"In an action for a divorce or for an annulment of a marriage where the defendant fails to answer, no reference shall be granted to take proof of the facts stated in the complaint, but before a judgment shall be granted the proof of such facts must be made to the court in open court, and a copy of the evidence written out and filed with the judgment roll.

"The court may, however, in case the evidence is such that public interest require that the examination of the witnesses should not be public exclude all persons from the court-room except the parties to the action, their counsel and the witnesses, and shall order such evidence when filed with the clerk sealed up and exhibited only to the parties to the action, or some one specially interested upon order of the court.—Rule 72, General Rules of Practice."

A further regulation is as follows:—

Rules of Supreme Court, No. 76.—" . . . . but " where no person appears on the part of the " defendant, the details of the evidence in adultery " causes shall not be read in public, but shall be " submitted in open court. No officer of any " court, with whom the proceedings in an adultery " cause are filed, or before whom the testimony " is taken, nor any clerk of such officer, either " before or after the termination of such suit, " shall permit a copy of any of the pleadings or " testimony, or the substance of the details " thereof, to be taken by any other person than " a party or the attorney or counsel of a party, " who has appeared in the cause, without a special " order of the court. . . ."

In the State of Colorado.—The clerk of the court may upon request keep the proceedings in such cases from off the docket for the purpose of preventing newspapers getting hold of the matter, but this law is reported to have little or no effect. The court can also order a hearing to be held with closed doors. This latter applies also to—

The State of Minnesota.

In the Territory of New Mexico there is a regulation to the effect that "the details of the evidence in " adultery causes shall not be read in public, but shall " be submitted to the court. No officer of the court " with whom the proceedings in adultery causes are " filed or before whom the testimony is taken, nor any " clerk of such officer either before or after the termination of the suit, shall permit a copy of any of the " pleadings or testimony or of the substance of the " details thereof to be taken by any other person than " a party, or the attorney or counsel of a party, who " has appeared in the cause, without a special order of " the court."

In the State of California likewise there are statutes as follows:—

Code of Civil Procedure, section 125: Sittings when private.—"In an action for divorce, criminal " conversation, seduction, or breach of promise " of marriage, the court may direct the trial of " any issue of fact joined therein to be private, " and may exclude all persons except the officers " of the court, the parties, their witnesses, and " counsel; provided that in any cause the court " may in the exercise of a sound discretion, during " the examination of a witness, exclude any or " all other witnesses in the cause."

Political Code, section 1032: Records open to public inspection, exceptions.—"The public " records and other matters in the office of any " officer are at all times, during office hours, open " to the inspection of any citizen of this State. " In all actions for divorce the pleadings and the " testimony taken and filed in said actions, shall " not be by the clerk with whom the same is " filed, or the referee before whom the testimony " is taken, made public, nor shall the same be " allowed to be inspected by any person except " the parties that may be interested or the " attorneys to the action, or by an order of the " court in which the action is pending; a copy " of the said order must be filed with the clerk." In cases of attachment, the clerk of the court with whom the complaint is filed shall not make public the fact of the filing of such complaint, or of the issuing of such attachment, until after the filing of return of service of attachment.

Idaho.—Revised Codes, section 3861: Exclusion of persons in certain cases.—"In an action for divorce, " criminal conversation, seduction or breach of promise " of marriage, the court may direct the trial of any " issue of fact joined therein to be private, and may " exclude all persons except the officers of the court, " the parties, their witnesses, and counsel: provided " that in any cause the Court may, in the exercise of " a sound discretion, during the examination of a " witness, exclude any and all witnesses in the cause."

Montana.—Revised Codes, section 6291: Sittings, when private.—"In an action for divorce, criminal " conversation, seduction, or breach of promise of " marriage, the court may direct the trial of any issue " of fact joined therein to be private, and exclude all " persons except the officers of the court, the parties, " their witnesses, and counsel: provided that in any " cause the court may, in the exercise of a sound " discretion during the examination of a witness, " exclude any or all witnesses in the cause."

Vermont.—Public Statutes of 1906, section 3082: Testimony in divorce cases, how given; exclusion of public.—"The testimony of witnesses shall be given " orally in court and by deposition as in other cases: " and the court may in its discretion, exclude from " the trial all persons except the officers of the court " and the parties in interest."

Wisconsin.—Circuit Court Rule 28, section 4: Actions for divorce.—"No other officer of the court " with whom the proceedings in an action for divorce, " in which adultery has been charged against either " party, are filed, or before whom the testimony is " taken, and no clerk of such officer, either before or " after the termination of such action, shall permit a " copy of any of the testimony or pleadings, or the " substance of the details thereof, to be taken by any " person other than a party to the action, or the " attorney or counsel of such party who has appeared " therein, without the special order of the court."

British Embassy,
Dublin, N.H.,
June 20th, 1910.

APPENDIX XVII.

Digest by Mr. J. S. R. Phillips of Memorandum.

The following is a digest of a memorandum by Mr. J. S. R. Phillips, Editor of "The Yorkshire Post," on reporting of divorce cases, issued to members of the Commission:—

He said at the outset that he did not represent any definite newspaper organisation. The opinions of newspaper proprietors and of journalists vary so very greatly upon this subject that it has been found impracticable to appoint any one person as the representative of a large majority. Some are in favour of the total abolition of reports, save only the names of the parties and the decisions, presumably as advertisements for the insertion of which the newspaper would be paid. There is a general feeling that if only names and decisions were published they would not be, what we newspaper men call, readable matter, and from this point of view would not be worth our space; so that we should, I think, almost universally, publish nothing rather than give a mere list. Another section believe in limited and official publication. They do not think it would be consistent with public interest that there should be no reporting; but they are very strongly of opinion that some of the reports printed at the present time—mainly, they say, by a few weekly papers which do not rank in high-class journalism, although they may have large circulations—are much to be deprecated. I have not examined these weekly papers, but Sir George Riddell, of the "News of the World," tells me he has made a large collection of reports, and that those appearing in the London weekly papers are not more extensive or in any way worse than those in "The Times," "Daily Telegraph," and other daily papers which have not been called in question. Some of my friends feel that unchecked publication is very apt to run into indecency, and that reports of the kind which they deprecate tend to degrade the readers, and, possibly, to encourage immorality. Those who hold this have no experience of official reporting, and they are not eager to define precisely what kind of a report for publication an official reporter ought to issue.

There are other journalists of standing who, while holding strongly that matter of the kind is injurious to the national life, are yet afraid that restraint would tend to defeat the interests of justice; they have known very many cases where publication has led to the discovery of fresh evidence, one way or the other. I have been told recently of a case in which the publication of an action for the restitution of conjugal rights was followed by certain information being tendered to solicitors, which proved that one of the parties had long and constantly been guilty of adultery. The fear lest restraint of publication should thus prevent the discovery of evidence had perplexed these journalists, who otherwise were in favour of suppression. So far as I can learn, none of them is able to lay down any clear principle which might serve as the basis of a legal enactment. Nor do I think that it is possible to lay down any clear principle if we get away from that which I regard as fundamental — that no indecent matter should be allowed to be published. This principle ought to be applied with even-handed justice to plays and novels, just as to newspaper reports. To set up a distinction between the two classes is, to my mind, invidious, and somewhat of an insult to British journalism, which, I maintain, is by no means the worst offender in this direction. I am aware that some newspapers act as if they thought it natural they should feed upon garbage, but these are very few in proportion to the journals which are pure and well conducted, and to enact a law specifically directed against any form of publication of this class of report in newspapers, whether or no such reports are carefully sub-edited to remove indecency from them, would be a distinct slur upon a profession which, as I have said, is not at all a bad offender. Besides, I am doubtful if the worst reports that are published in newpapers are those of divorce trials; the grossest case reported by newspapers in the current year has not had to do with divorce. It was a charge of criminal libel. There have been other cases in England which involved issues equally gross; and one may add that the famous Thaw case, reported very fully in (some of) our English newspapers, was not a divorce case, though the reports sent from America contained statements much more striking in their sexual relation than any that I have seen in recent reports of divorce actions.

If your object is to prevent the publication and wide dissemination by newspapers of objectionable matter involving sexualism and, one may add, abnormality, you must throw your net much more widely than has been suggested by any of the witnesses whose evidence I have seen. You must aim, not against the publication of reports of divorce cases, but against that of this much more extended class of reports, many of them far worse than the mere giving of such details as are ordinarily reported in connection with applications for divorce. It would be impracticable to set up any law against the reporting of libel actions or of such criminal cases as the charge against Mr. Oscar Wilde, and all you can do in regard to these matters is to enact, if the existing law is not plain enough—and see that the enactment is carried out—that there should be no publication of indecent matter. When we have arrived at this point, I would further urge that legislation of the kind must include novels and plays; for it would be absurd to say that a newspaper may not publish the report of a divorce case, while it may publish, in the form of a novel, written more attractively from the point of view of immorality, a story precisely on all fours with the divorce case which it is sought to bar. There is one striking distinction between newspaper reports of divorce cases and plays and novels, in this: that the reports of the divorce case may, and often do, serve a very useful purpose in either rehabilitating the character of some person who has been attacked, or in showing a prominent person in his true character, and, further, that the fear of publicity may exercise some deterrent effect; whereas in the novel, where all the personages are fictitious, publication does not provide any equivalent benefits. Fiction is not, and cannot be, in the same category as the advocacy of political or social charge. No serious student could regard it in that light, nor is it written for serious students. I would not interfere with liberty of discussion—nothing is further from my thought. The thing advocated may be good or bad—within recognised legal limits, I would not ask for interference. But a novel proves nothing; it is not scientific from the social or political standpoint, and this for the reason that the writer postulates what he pleases; he manufactures his own facts, and can arrange his argument, and, therefore, must be a numskull if he cannot draw the conclusions he had in mind at the beginning. May I give a few extracts from novels published recently, to show the class of matter I have in mind? Most of the writers of this class of fiction are, one may note, ladies; and it is curious that if one looks back to earlier periods in the history of English literature, such as the Restoration period and the Augustan period of Queen Anne, one finds in the earlier that Mrs. Aphra Behn's plays were the worst of a very immoral set, and among the Queen Anne writers Mrs. Manley shines conspicuous. Even a little later, the famous Mrs. Letitia Pilkington, with her memoirs, out-did all male rivals. (Mr. Phillips here included extracts from novels by a certain class of writers of the present day, scattered broadcast at low prices.) In all of these the moral is preached (by no means for the first time in the history of the world) that—if I may quote the famed Mrs. Letitia Pilkington—

> The name of Marriage is the Bane of Pleasure,
> And Love should have no Tie, but Love to bind it.

And the purpose of the books, so far as one can see, is distinctly to eulogise the fact of men and women living together in what the north-country artisan folk call "living tally"—that is, without the sanction of the Church or of the law of the land. One might almost suppose there was a definite and organised crusade in this direction, its leaders being both men and women. Like most of the indecent fiction in times past—such as "The Sisters," by the Parson Dodd, who was hanged for forgery—they profess to have a moral or social purpose. As a rule, the profession is a mere pretext for publishing what the writers (or publishers) think will sell; and we all know that there is a large market for indecent photographs and postcards, when the police do not spoil it by interference. In my researches in literature of this class—a literature of whose fulness I had no knowledge—I have been struck by the fact that these novels, having done duty in the higher-priced form in circulating libraries and among the wealthier classes, are now spread broadcast at the price of one shilling, or even sixpence. I am informed that it is the habit of librarians of circulating libraries to watch carefully what novels are in the greatest demand, and temporarily to suspend these from circulation until the librarian has read them. The other day, in skimming over a book review page in an illustrated weekly paper, I found the statement that there were in such and such a novel—which the reviewer was praising in protest against the, in my opinion, thoroughly justified action of the circulating libraries—certain chapters which, he said, would be read with great zest again and again by young people, and the more so because their elders had condemned the novel; and it is notorious that in books of this class certain chapters are regarded by publishers and public as those which will actually sell a novel, no matter how feeble and futile it may be as a work of art. I venture to press most strongly that if you enact a law against the publication of divorce cases, while you allow literature of this kind to be spread broadcast, you are straining at a gnat and swallowing a camel. It may, of course, be said that these novels are sold at a shilling or sixpence, whereas the report of the divorce cases may be bought for one penny, or even a halfpenny, and that the newspapers have a much larger circulation. But while this is true, there is nothing in the proposed change of the law to prevent a newspaper from publishing novels of the kind if they are found to sell that newspaper, and there can be nothing unless you adopt the principle I have suggested, namely, that of basing any legislation or administration upon the prohibition of indecent matter, without regard to the form which such publication may take. I have here an extract from an address given on St. George's Day by Canon Rawnsley:—

> "As long as the world stood there would always be need of St. Georges. £250,000 less money was wasted last year in whisky, but no sooner did one evil seem to be trampled under

> foot by the gallant St. George of the temperance crusade than another dragon-form of evil took its place. The illustrated papers, the filthy sex novels, the grossly vulgar and often obscene postcards, indecent prints, the entirely indecent photographs, were corroding the people's life—were dragons abroad poisoning ideas of modesty and manly self-control and noble thoughts on courtship and marriage. He had a "black list" of 120 novels, every one of them corrosive and abominable in their pandering to animal passions and immorality, and all of them were largely in circulation during the past two years."

May I point out, for the sake of a parallel with the reporting of divorce cases, that novels dealing with illicit connections are not necessarily objectionable. One need only name Scott, George Eliot, Dickens, and Thackeray as writers capable of treating what it is the fashion to call problems of humanity in a manner to which no person can possibly object. It is true these great writers did not set themselves up as preachers of a creed; they were content to draw pictures of life, and to be regarded as novelists. In so far as they teach, they teach morality and chastity. In like manner as we do not regard their treatment of sexual passion as immoral, and leading to the degradation of those who read their stories, but entirely pure and beneficial, so the question whether a newspaper report of a divorce case—or any other involving sexual or abnormal causes—is or is not objectionable, depends, entirely upon the way in which it is handled, and, as a rule, not upon the mere fact of the reporting. I wish to lay stress upon this, for I base upon it my principle that, while it is right for the law to prohibit or punish the publishing of indecent matter and matter encouraging immorality, it is not the business of the law to prohibit the reporting of any special series of cases which come before the courts.

I have made a little study of the evidence already given before this Commission, and I find among the witnesses, just as there is among journalists and newspaper proprietors, very great diversity of opinion as to whether divorce cases should or should not be reported. I note that in France, as, I may say, in Norway, the publication of divorce cases is prohibited. According to a Norwegian writer, whose articles appeared in April in the London "Daily News," the reason for forbidding reports in Norway seems to be the belief that it is a needless cruelty to the parties.

Divorces in Norway are obtained on very slight grounds; whereas in this country divorce is only to be had for causes which one may call serious. I do not think it can be alleged that the people of Norway, or of France, are more moral than ours; indeed men who have investigated student life in Norway—where "mixed" education is common—assure me that there is very great laxity in this respect among male and female students. So far as I can gather, there is no definite principle running through the opinions which have been given before your Commission upon this question of reporting. Many witnesses have represented that there ought to be no publication, and have made the somewhat vague statement, entirely unsupported by evidence, that immorality is caused by reading reports of the kind. A search through the evidence shows that in certain instances witnesses have alleged certain definite causes as operating to produce immorality and so bring persons into the divorce courts. We have heard of overcrowding and the like as operating here, and Mr. Douglas Eyre spoke of impossible relationships as established by early marriages; but no one witness has adduced a single instance in which it can be said that adultery had been committed as a consequence of reading reports of divorce cases. From time to time we have had complaints of boys being led away into crime, theft, and burglary by reading stories of criminals who are made into heroes; but, as I have said, there is no instance given anywhere of a person being demoralised and indulging in immorality as a consequence of reading divorce court reports. I would urge strongly that, if seduction and adultery can be traced to the reading of literature at all, one must look for the operative cause in these novels to which I have referred, rather than in the stories told in the divorce courts.

Lord Alverstone, in his evidence against publication said that "the best of the Press entirely agreed with "the view, and did not publish these things." His Lordship is, I venture respectfully to suggest, better acquainted with law than with journalism. In "The Times," the "Daily Telegraph," "Standard," the "Morning Post," there are frequently long reports giving details of divorce cases. They are given not for any purely legal questions involved, but because the public will read them. It will be within the memory of most members of the Commission that there were long reports in certain well-known cases involving persons of eminence in the political world, and the fact is equally true of all cases which affect persons well known in society, on the stage, or in the commercial world—in short, cases are reported in the "best newspapers" if those cases are likely to interest the class of readers for whom the newspapers cater. More than this, his Lordship did not give any facts in support of his supposition that the reporting of these cases has increased, or that more details are published now than formerly. I believe there is no foundation for that supposition; my own observation and professional experience, extending to nearly 32 years, are against it. The letter from her late Majesty Queen Victoria to Lord Campbell, in 1858, in the early days of the operations of the Divorce Court, indicates the character of the reports then published. Lord Alverstone ignored the effect of novels such as I have referred to, and especially stories and obscene jokes published in certain weekly papers which do not publish divorce reports. The Joint Select Committee, of 1908, over which Earl Beauchamp presided, had before it evidence by Mr. Byrne, C.B., of the Home Office, Mr. Corfe, Mr. Coote, of the National Vigilance Society, and others, who complained of these stories, jokes, and illustrations in eight weekly papers, which, they said, demoralised the public, if what they published were not legally obscene or indecent; and if it were the fact—of which we have no evidence—that immorality has increased among the class of people who read weekly papers, that might be due to the new developments in fiction, and not to divorce reports, which, as my investigation shows, have not become worse.

An earlier witness had laid stress upon the fact that Queen Victoria was very emphatic in her condemnation of such reports; but as against that I may set the fact that in Lord Morley's "Life of Gladstone," there is a footnote which says, "Mr. Gladstone used to "desire the prohibition of publicity in these proceedings "until he learned the strong view of the President of "the Court, that the hideous flare of this publicity acts "probably as no inconsiderable deterrent." This, however, introduces a factor with which I propose to deal later. It is the demoralising tendency with which I am yet concerned; and I may remind you that Lord St. Helier on several occasions paid a high tribute to the discretion with which reporters discharge their duties. I believe he did this distinctly in his farewell to the court when he retired, and I take it that this praise of the reporters meant that, in his opinion, while dealing with dubious relationships, they exercised their skill wisely, and avoiding the publication of indecencies or anything which might tend to encourage immorality.

I turn now to the question of publication as a deterrent. Several witnesses have spoken strongly of the desirability of publishing somewhat of these divorce cases, because that is regarded here—as in Norway—as a punishment inflicted upon the parties. Several of your witnesses have protested that no publication of evidence or general facts should be allowed, but that we should have the names and permanent addresses of all the parties, with the result of the proceedings. They recognise here that publication is obnoxious to those whose names are concerned. I myself have known many instances. Within the present year I had a letter from a firm of solicitors begging me not to publish a report of a certain divorce case, because, they said, the co-respondent was an inspector of secondary education under a county authority, and if this matter got to the ears of the authority he would lose his situation. Of course, the stopping of publication in a case of that kind seemed to me to be distinctly against the public interest; I think not merely the

county authorities, but the public concerned had a right to know something of what this education inspector had been doing.

I note that Mr. Pickstone, the Registrar of the Bury County Court, while advocating prohibition of publication, frankly said that he thought there would be more divorce cases as a result of prohibition; and he had been professionally concerned in cases where the parties had begged him to secure the suppression of details. Mr. Thomas Griffithes was of opinion that some petitioners — presumably innocent persons — would not go into court because of the fear of publication, and that witnesses objected to having their names brought before the public; and it seems to me, that if these persons are ashamed to appear in the Divorce Court when they are entirely innocent of offence and nothing is to be charged against them, a similar fear must operate very strongly when persons are subject to temptation, and that we have here fair argument that publication does act as a deterrent.

I would lay stress upon the opinion of Mr. Justice Bigham (Lord Mersey) and Mr. Barnard, K.C., as men of experience professionally in divorce cases, that publication has a wholesome check upon people who know that if they misconduct themselves it will be published to the world.

Mr. J. C. Priestley, K.C., was of the same opinion; and he further urged that if a case were tried in open court, and there was no report of it, all sorts of stories would get about as to the nature of the evidence, and perhaps an innocent person, wrongly charged, would suffer harm. It was only fair, he held, that in country districts, or in town, where people had discussed these cases before they went into court, it should be known what was actually proved or disproved.

May I say that in a recent case, which came within my own knowledge, in which the wife of a gentleman well known in his own locality, was divorced for persistent misconduct and elopement with a gentleman from another part; there had been many false rumours respecting the attitude of the husband towards the wife. In the neighbourhood where he lived, it was said that he treated her unkindly, and without any sort of consideration; whereas the evidence given in the Divorce Court, which was published pretty fully in the newspapers, showed that he had been not only considerate, but even most anxious, after she had eloped with the other man, that she should return to her children and to him. It was, indeed, proved that his affection for her was maintained down to the time when—after one elopement abroad, and he and some friends of hers had followed and induced the couple to return to England—she finally determined that she would live with the other man.

I may point, perhaps, to another case, well within my recollection, in which an action for divorce was brought and failed. Certain charges, not amounting to infidelity, were brought against the husband. The case was talked over in a large district, and but for the publication of a fairly full report of the case, it may easily have been held, by a verdict for the lady, that the husband had not acted properly. The evidence, however, produced, I think, a general opinion that the verdict was not quite accurate, and, as a matter of fact, a fresh action was brought some months later, when it was abundantly proved that the husband had full grounds for demanding the divorce which he obtained.

The question is, however, larger than its bearing on the parties directly concerned, and I should like to name a case in which I think full publication, avoiding indecency, was a matter of first importance in the public interest. I refer to the case of Lord Melbourne, in June 1836, when an action for Crim. Con. was brought against him by the husband of the Hon. Caroline Norton. There had been many rumours connecting the name of the Whig Prime Minister with Mrs. Norton, who was notoriously unhappy in her marriage, and entirely at outs with her husband. Lord Melbourne had unquestionably been a constant visitor at her house; he had sympathised with her; his attentions to her were such that rumour suggested a further and improper interest. The statement made by the Attorney-General in behalf of Lord Melbourne and the characters of certain of the witnesses for Mr. Norton seem to have disposed of the accusations, and the verdict was in his favour. Am I going too far when I say that if that trial had been with closed doors, or if it had been impossible to publish a full report of the case, a large section of the public would have said, "Of "course, they would not give a verdict against the "Prime Minister"? My opinion is that, in a case of this kind, it is essential for the rehabilitation of the prominent politician that there should be free publication of the evidence given.

I may add that the report of this trial was very full —probably in nearly all the papers in the country— certainly in the one whose files I have consulted, the "Leeds Intelligencer," which is the ancestor of "The Yorkshire Post." I find that the case is reported practically verbatim, so far as concerns the opening speech of council—Sir W. Pollitt—and the evidence against Lord Melbourne and Mrs. Norton. The case, I may say, was tried in the Court of Common Pleas. Some of the evidence is such as would certainly not be reported in any newspaper, daily or weekly, at the present time. The report itself would occupy at least six columns of "The Yorkshire Post," Sir William Pollitt's speech filling two columns.

I do not ask for the Press liberty to publish such evidence as was published in the Melbourne case, but I do maintain that in a divorce court, where two persons of eminence are concerned, one of them occupying the highest position in the political world, it would be intolerable to place obstacles in the way of the publication of a very full report.

My next case is that of Sir Charles Dilke. I am not going to say that the country did not suffer a loss by the eclipse of a brilliant politician, but without expressing any opinion beyond this, and without going into the merits, it must certainly be held that here was a case in which the public were entitled to full information so that they might form their own opinion. Perhaps I may add that had there been merely a statement published of the result of the first trial, there could not have been a demand for those second proceedings, which most people afterwards thought were entirely justified.

My third case is that of Mr. Parnell. Here, too, we had a brilliant politician, the leader of a national party, whose career was undoubtedly stopped by a divorce action, and especially by the publication of details. You may recollect that certain important members of the Liberal party were—rightly or wrongly —endeavouring to work with Mr. Parnell as if nothing had occurred. They would certainly have done so had there been no publication of details.

I maintain, further, that to report divorce actions may be necessary in the public interest where high naval or military officers are concerned. One has read allegations against great commanders of past ages, that they promoted officers on account of the attractive qualities and easy virtue of the wives of these officers; and in this matter, until human nature is changed, it is to be feared that what has been may be. A divorce case affecting a soldier or sailor of high rank and unquestioned ability in the field might bring in question his appointments, and unless the facts were brought clearly before the public, the Government could not deal with him; a Nelson could not be set aside simply because of adultery. Public opinion would not allow anything of the kind.

There are even cases, other than actions for divorce, where newspapers of the highest standing have thought it needful, in the public interest, to publish details which, to say the least, verged closely upon indecency. I recollect one series of reports, published by the "Manchester Guardian," which described certain orgies said to have taken place in a theatre after the close of the performances, when the lights were turned down, and men and women of loose character were supplied with liquor in private boxes, and of immoral conduct alleged to have taken place in the manager's office between him and certain women employed on his stage. The reports were published in justification of the demand for the withdrawal of the licence of the theatre —a matter which had aroused much feeling in Manchester. The evidence was not published by the "Manchester Guardian" as a means of selling the paper, but solely in the performance of what its proprietors and editor believed to be a public duty; and

I suggest that, although I hold that the publishers of indecent matter should be punished, there may be circumstances in which a newspaper ought to be able to plead justification—that publication was necessary in the interest of public morality.

And this brings me to the suggestions made before you, that there should be official reports, or that newspapers should report only such bald details as presumably would be consistent with the dignified authorisation by one of His Majesty's judges. Reports of this kind would be looked upon by the public as garbled. If the judge, exercising his right, ruled out from publication evidence given by persons of high social or courtly standing, I am afraid the public would attribute improper motives, and it is conceivable that serious conditions might grow out of rumour. I maintain, respectfully, that if some member of our Royal family, or some bishop or cabinet minister, were co-respondent in a divorce action, and no report—or only a guarded official report—were allowed to be published, a very serious state of things would arise. We should have questions, if not a debate, in the House of Commons, and discussion throughout the country, with statements made—not on oath. Were a judge to exercise the right of trying "in camera" a case other than a nullity suit, or certain classes of evidence, and there was reason to believe he did so to cover the misdeeds of individuals, his conduct would probably be the subject of a motion in Parliament.

On the other hand, it would be impossible to allow a judge the right to say that the report of a divorce case affecting a well-known politician must be published, while he disallowed the publication of one affecting, shall I say, an army or naval officer, or some wholly private person. There is, in short, a lack of definite principle about all these proposals for limiting reporting. That which would allow a judge to summon a newspaper editor or proprietor, and penalise him for contempt of court, would be unsatisfactory in this—that no distinct principle is suggested by which the editor or proprietor could tell, when the report was before him, that he was or was not going outside that which the court would allow. You could have no standard by which to foretell the working of the judicial mind, for in this respect judges differ much as other and less distinguished persons. Newspaper men, I think, are entitled to some definite and adequate means of knowing whether they are inside the law or without it. I do not see that in this respect you can treat them in a manner different from that in which the general public are treated, and, therefore, I must come back to where I started, and say that if you want to restrict within the bounds of propriety the reports of divorce cases, you can do so only by laying down the general principle that they shall not publish anything which is indecent, or which directly incites to immorality. In this matter the editor of a newspaper is not protected by privilege, nor should he be. If he reports accurately what passes in open court, he is protected against actions for libel. That is well understood. But he is not protected against prosecution on account of the indecency or immoral tendency of what he publishes; he cannot shelter behind the plea that he is only reproducing what was said by a witness, by counsel, or by the judge. May I add, that for publication, the editor and proprietor (or publishers), if directly concerned, must be held responsible—not the reporter? It is the obvious duty of the editor to strike out of the report what passages he pleases, and to instruct the reporter what, if any, additional facts to give. If the editor hears of evidence not reported and asks the reporter why he did not report it, it would be no excuse for the reporter to say he did not think its publication would be legal—he would get his month's notice all the same.

It may be true that reports like those of the Melbourne case demoralise the public—and, in any event, I think they should be prevented, just as similar indecency in novels should be—but I fancy that an objector to this opinion might ask how it is that there has been a gradual but steady improvement in the character of the reports given by newspapers. Did those earlier reports really demoralise the nation, or did the improving morality of the nation impress itself upon newspaper reporting?—it being found that the public who purchase newspapers of the better class objected to having evidence such as I have indicated being thrust in their eyes, and especially under the eyes of their unmarried daughters. The great interest in these cases is shown in the fact, as reported by the "Leeds Intelligencer," that when the case of Lord Melbourne was before the Court of Common Pleas, as much as five guineas was paid for a seat.

If once you go outside that general principle—prohibit indecency and the teaching of immorality, but do not try to go further than this—you run up against a great variety of opinions and cases which seem to be irreconcilable one with the other. I agree that extensive publication of matters of the kind, even when actual indecency is avoided, is not of the most elevating character. If it were possible to run newspapers devoted solely to politics, art, sermons, science, literature—Shakespeare and the musical classes—and to principles of law, that no doubt would be excellent from many points of view, but with the exception of the "Spectator," the "Nation," the "Saturday Review," the "Athenæum," and "Punch," the ideal appears to be impossible of realisation. The public read the reports of murders, of libels, of horse racing, and football matches, and I do not know that devotion to these is any less detrimental than the occasional reading of divorce court reports, always provided that there is an absence of indecency and incitement to immorality. You can single out these two offences for punishment, and I think it should be done, but if you go beyond that, as I have said, you are very soon in difficulties. Finally, in behalf of my profession, I would again lay stress upon the fact that, though there may be certain weekly newspapers which I and most journalists would like to see restrained, I must protest against legislation which would seem to be based on the erroneous supposition that in these matters newspapers are the worst offenders. We are not. The worst offenders are the class of novelists with which I dealt in the earlier part of this memorandum.

APPENDIX XVIII.

Statistics as to Divorce in Scotland.

Prepared by Dr. J. C. Dunlop, Superintendent of Statistics in the Office of the Registrar-General of Scotland.

Source of Information.

In every case in which the status of any person is altered by the decree of a competent court, the Act 18 Vict. cap. 29, sec. 5, provides that the decree shall be reported to the Registrar-General, who then places a note on the margin of the entry in the marriage register relating to the case. Accordingly, all decrees of divorce are reported to the Registrar-General by the clerks of court, on a form supplied by him, in which the place and date of marriage, the particulars of the action, and sometimes the occupation of the husband are stated. By reference to the marriage registers the following additional information is obtainable, viz., the civil condition of the spouses at the time of marriage, their ages, their occupations

whether the marriage was regular, *i.e.*, preceded by banns or publication of notice and celebrated by a clergyman, or irregular, *i.e.*, not so preceded by banns or publication and not celebrated by a clergyman, but registered on a warrant of the Sheriff, granted under the provisions of Lord Brougham's Act.

The figures in the tables appended are based on an examination of the decrees pronounced during ten years, 1900 to 1909. Decrees during that period numbered 1,801; of these the marriages in 147 cases had been contracted outside Scotland, and in 1,654 cases the marriages had been contracted in Scotland and were thus traceable in the Scottish marriage registers. The 1,654 divorces included two cross actions, in which decree was given both to the husband and to the wife, and thus the total number of persons affected was 3,304.

For the purpose of comparison of the statistics based on the examination of these ten years' divorces with marriage statistics, the marriage statistics of the year 1892 have been taken. The average duration of the marriages dissolved by divorce during the ten years is found to be 11½ years, and the middle of the year 1892 being 11½ years before the end of 1904, is taken as the mean date of marriage of those persons who were divorced in the years 1900 to 1909.

Many of the figures stated are given with reservation, as in many instances the numbers dealt with are too small to exclude the possibility of error from paucity of data. Another source of error arises from the fact that no allowance has been made for Scottish marriages dissolved by divorce in courts outside Scotland.

Frequency of Divorce.

One marriage out of 174 is dissolved by divorce, 1 out of 400 at the instance of the husband, and 1 out of 307 at the instance of the wife. This frequency is greater in the case of marriages of those previously unmarried at the time of marriage than in the case of marriages in which one or both of the spouses were widowed at the time of the marriage. Thus of all those who were bachelors at the time of marriage 1 in 166 is divorced, and of those who were widowers 1 in 277 is divorced; of those who were spinsters at the time of marriage 1 in 170 is divorced, and of those who were widows 1 in 278 is divorced. Of marriages between bachelors and spinsters, 1 in 164 is dissolved by divorce, and of those between bachelors and widows, 1 in 265. Of marriages between widowers and spinsters, 1 in 272 is dissolved by divorce, and of those between widowers and widows, 1 in 292. (Table I.)

Duration of Marriage before Divorce.

Taking the statistics of the same ten years, the period elapsing between marriage and divorce was found to vary from four months to 40 years, and to average 11·6 years. In actions raised by husbands the average duration was 11·1 years, and in those raised by wives 12·0. The average duration was longer in those cases in which both spouses were unmarried at the time of the marriage than in those in which one or other or both of the spouses were widowed at the time of marriage. Thus the average duration of those cases in which the husband was a bachelor at the time of marriage was 11·6, and in which he was a widower 10·5, and in those cases in which the wife was a spinster at time of marriage, 11·7 years, and in which she was a widow, 8·8. (Table II.)

Divorce Rate in each Year of Married Life.

There are no records, censal or other, showing the number of marriages of each year's duration existing in Scotland. For the purpose of estimating the chance of divorce in each year of married life, I have, by applying suitable death-rates to the recorded marriages of one year, estimated the probable number of marriages dissolved by death annually, and thus estimated the probable number of existing marriages of each year's duration. The marriages of the year 1892 were selected for the basis of the calculation, and those marriages were all assumed to be between men aged 27 and women aged 26, those ages being the average ages of all marrying during that year. The chances of divorce have been calculated by comparing the mean annual number of divorces of each year's duration of married life with the corresponding estimated number of existing marriages, The results of the calculation are shown in Table III., and in the chart. The divorce rate expressed as per 10,000 existing marriages is found to reach a maximum of 4·9 in the sixth year of marriage, and another maximum of 4·9 in the ninth year of marriage. The divorce rate of actions raised by husbands reaches a maximum of 2·4 in the ninth year of marriage, and that of actions raised by wives a maximum of 2·9 in the sixth year of marriage. The chance of divorce is found to increase rapidly during the first six years of marriage, and to fall gradually after the ninth year of marriage. (Table III., and chart.)

Age of Husband at Time of Divorce.

Their ages ranged from 20 to 73 years, and averaged 37·5. In actions raised by wives the average age of the husbands was 37·5, and in actions raised by husbands, 37·5. The average age of the husbands in those cases in which they were bachelors at the time of marriage was 36·8, and in those cases in which they were widowers at the time of marriage, 47·4. (Table IV.)

Age of Wife at Time of Divorce.

The ages of the wives ranged from 16 to 69, and averaged 34·6. In actions raised by the husbands, the average age of the wives was 34·1, and in those raised by the wives, 35·1. The average age of wives in cases where the wives were spinsters at the time of marriage was 34·4, and in those cases in which they were widows at the time of marriage, 41·9. (Table V.)

Age of Husbands at Time of Marriage.

The ages of the husbands at the time of marriage ranged from 16 to 56, and averaged 25·8. The rate of divorce is higher among those married young than among those married older. Of marriages ending in divorce 13·7 per cent. were of men of less than 21 years old, while the corresponding proportion of all marriages is only 6·2 per cent.; and the proportion of marriages ending in divorce in which the men were less than 25 years old was 55·8 per cent., the corresponding proportion of all marriages being 37·5. (Tables VI. and VII.)

Age of Wives at Time of Marriage.

Their ages ranged from 14 to 52, and averaged 22·9. The rate of divorce is higher among those married young than among those married older. Of marriages ending in divorce 38·6 per cent. were of women of less than 21 years old, the corresponding proportion of all marriages being 19·7, and the proportion of marriages ending in divorce in which the women were less than 25 years old was 77·3 per cent., the corresponding proportion of all such marriages being 55·9. (Tables VIII. and IX.)

Age at Marriage and Duration previous to Divorce.

In actions raised by husbands, the average duration of the marriage is found to be longer where the ages of the wives are younger, and the average duration shorter when the ages of the wives are older. The maximum duration is found when the ages of the wives are 19, and the duration markedly decreases when the ages of the wives exceed 30. Similarly with divorces raised at the instance of the wives, the maximum average duration of marriage is found to be when the husbands' ages are 19, and the average duration is found to markedly decrease when the husbands' ages are over 35. Young marriages more frequently end in the divorce court than older marriages, but older

marriages which end in the divorce court come into that court after a shorter period than younger marriages which end there. (Table X.)

Comparative Frequency of Divorce in Regular and Irregular Marriages.

Of the 1,654 divorces traceable in the Scottish marriage registers, 1,424 were of persons regularly married, and 230 of persons irregularly married. The divorce rate of persons regularly married is found to be 1 in 193, and of those irregularly married is found to be 1 in 52. Regular marriages where divorce follows at the instance of the husband are 1 in 444, and at the instance of the wife, 1 in 341. The corresponding rates in the case of irregular marriages are 1 in 123, and 1 in 91. Thus divorce is nearly four times as frequent in irregular marriages as in regular marriages. (Table XI.)

Frequency of Divorce in Marriages in Stated Denominations.

Divorce is relatively most frequent among those married according to the rites of the Episcopalian Church, 1 in 101, and least so among those married according to the rites of the Roman Catholic Church, 1 in 548. In Established Church marriages the rate is 1 in 180, in Free Church, United Presbyterian Church, and United Free Church combined, 1 in 199, and in churches of other denominations combined, 1 in 155. (Table VIII.)

Frequency of Divorce in Stated Occupations.

The occupations most frequently mentioned in the 10 years' records of divorce are:—(1) Iron manufacture, engineering, &c., (2) food trades, (3) building trades, (4) mining, (5) farming, and (6) horse transport. To construct rates for comparison, the number of divorces in specified occupations, or in groups of occupations, have been compared with the number of men found in those occupations, or groups of occupations, at the time of the 1901 census. Rates thus obtained show that divorce was relatively most frequent among (1) soldiers, (2) indoor domestic servants, (3) seamen, (4) commercial men, (5) hotel service, and (6) police; and that divorce was relatively least frequent among (1) farmers, agricultural labourers, &c., (2) general labourers, (3) outdoor domestic servants, (4) clergy, (5) miners, and (6) building trades. (Table XII.)

Actions instituted by husbands were relatively to those instituted by wives most numerous in (1) hemp, jute, coir, &c. manufacture, 14 to 5; (2) soldiers, 26 to 14; (3) textile manufacture, 53 to 38; (4) general labourers, 16 to 12; and (5) building trades, 66 to 51. Occupations in which the proportion of the total divorces to be instituted by wives was greatest were, (1) indoor domestic servants, the proportion being 5·50 actions by wives to 1 by a husband; (2) outdoor domestic servants, the proportion being 4·00 to 1; (3) clerks, 3·43 to 1; (4) clergy, 3·00 to 1; (5) medical practitioners, 2·50 to 1; and (6) butchers, 2·11 to 1. (Table IX.)

TABLE I.

GENERAL STATISTICS.

All Marriages.

—	Number of Divorces.	Number of Marriages in which 1 Divorce occurred.
Instance of husband -	717	400
„ wife - -	935	307
Total - -	1,652	174

Marriages of Bachelors.

—	Number of Divorces.	Number of Marriages in which 1 Divorce occurred.
Instance of husband -	654	392
„ wife - -	891	288
Total - -	1,545	166

Marriages of Widowers.

Instance of husband -	63	480
„ wife - -	46	657
Total - -	109	277

Marriages of Spinsters.

Instance of husband -	685	396
„ wife - -	913	297
Total - -	1,598	170

Marriages of Widows.

Instance of husband -	32	487
„ wife - -	24	650
Total - -	56	278

Marriages between Bachelors and Spinsters.

Instance of husband -	640	389
„ wife - -	876	284
Total - -	1,516	164

Marriages between Bachelors and Widows.

Instance of husband -	14	549
„ wife - -	15	513
Total - -	29	265

Marriages between Widowers and Spinsters.

Instance of husband -	45	496
„ wife - -	37	604
Total - -	82	272

Marriages between Widowers and Widows.

Instance of husband -	18	439
„ wife - -	9	878
Total - -	27	292

TABLE II.

DURATION OF MARRIAGE BEFORE DIVORCE.

All Marriages.

—	Number of Divorces.	Maximum Duration.	Minimum Duration.	Average Duration.
Instance of husband	717	40 years	4 months	11·1
„ wife -	937	39 „	7 „	12·0
Total - -	1,654	—	—	11·6

Marriages of Bachelors.

Instance of husband	654	40 years	7 months	11·2
„ wife -	891	39 „	7 „	12.0
Total - -	1,545	—	—	11·6

Marriages of Widowers.

Instance of husband	63	28 years	4 months	9·8
„ wife -	46	29 „	1 year -	11·3
Total - -	109	—	—	10·5

Marriages of Spinsters.

Instance of husband	685	40 years	4 months	11·3
„ wife -	913	39 „	7 „	11·2
Total - -	1,598	—	—	11·7

Marriages of Widows.

Instance of husband	32	24 years	7 months	9·1
„ wife -	24	25 „	1 year -	7·6
Total - -	56	—	—	8·5

Marriages of Bachelors and Spinsters.

Instance of husband	640	40 years	7 months	11·2
„ wife -	876	39 „	7 „	12·1
Total - -	1,516	—	—	11·7

Marriages of Bachelors and Widows.

Instance of husband	14	22 years	7 months	8·6
„ wife -	15	12 „	3 years -	6·5
Total - -	29	—	—	7·6

Marriages of Widowers and Spinsters.

Instance of husband	45	28 years	4 months	10·0
„ wife -	37	29 „	1 year -	11·8
Total - -	82	—	—	10·8

Marriages of Widowers and Widows.

Instance of husband	18	24 years	3 years-	9·5
„ wife -	9	25 „	2 „ -	9·3
Total - -	27	—	—	9·4

TABLE III.

DIVORCE RATE IN EACH YEAR OF MARRIED LIFE.

Duration of Marriage.	Estimated No. of Marriages.	Average Yearly Divorces.		Ratio of Divorces to 10,000 estimated existing Marriages.		
		Instance of Husband.	Instance of Wife.	Instance of Husband.	Instance of Wife.	Total.
—1	28,670	0·9	0·3	0·3	0·1	0·4
1	28,348	1·1	0·8	0·4	0·3	0·7
2	28,019	1·9	0·9	0·7	0·3	1·0
3	27,682	2·6	1·8	0·9	0·7	1·6
4	27,334	3·9	3·0	1·4	1·1	2·5
5	26,973	4·9	6·2	1·8	2·3	4·1
6	26,598	5·2	7·8	1·9	2·9	4·9
7	26,206	4·2	7·0	1·6	2·7	4·3
8	25,797	4·1	6·5	1·6	2·5	4·1
9	25,375	6·0	6·4	2·4	2·6	4·9
10	24,937	4·2	4·9	1·7	2·0	3·7
11	24,481	4·3	5·3	1·7	2·2	3·9
12	24,008	3·2	5·5	1·3	2·3	3·6
13	23,518	3·8	4·3	1·6	1·8	3·4
14	23,016	2·1	4·3	0·9	1·9	2·8
15	22,503	2·9	4·3	1·3	1·9	3·2
16	21,984	2·0	3·2	0·9	1·4	2·3
17	21,458	2·1	2·4	0·9	1·1	2·0
18	20,925	2·1	3·2	0·8	1·4	2·2
19	20,383	1·6	2·0	0·8	0·9	1·8
20	19,830	0·9	2·5	0·5	1·3	1·7
21	19,265	0·9	2·4	0·4	1·2	1·7
22	18,672	1·4	0·9	0·6	0·5	1·1
23	18,083	0·7	1·9	0·4	1·1	1·4
24	17,481	1·0	0·9	0·5	0·5	1·0
25	16,868	0·7	1·4	0·4	0·7	1·1

TABLE IV.

AGE OF HUSBAND AT TIME OF DIVORCE.

All Marriages.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	717	20	73	37·5
„ wife -	937	22	65	37·5
Total - -	1,654	—	—	37·5

Marriages of Bachelors.

Instance of husband	654	20	66	36·4
„ wife -	891	22	65	37·1
Total - -	1,545	—	—	36·8

Marriages of Widowers.

Instance of husband	63	30	73	48·6
„ wife -	46	31	64	45·7
Total - -	109	—	—	47·4

Marriages of Spinsters.

Instance of husband	685	20	73	37·1
„ wife -	913	22	63	37·4
Total - -	1,598	—	—	37·3

Marriages of Widows.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	32	23	64	44·1
„ wife -	24	28	65	42·3
Total - - -	56	—	—	43·3

Marriages of Bachelors and Spinsters.

Instance of husband	640	20	66	36·4
„ wife -	876	22	63	37·1
Total - -	1,516	—	—	36·8

Marriages of Bachelors and Widows.

Instance of husband	14	23	50	35·0
„ wife -	15	28	65	37·2
Total - -	29	—	—	36·1

Marriages of Widowers and Spinsters.

Instance of husband	45	30	73	47·6
„ wife -	37	31	60	44·4
Total - -	82	—	—	46·2

Marriages of Widowers and Widows.

Instance of husband	18	39	64	51·1
„ wife -	9	42	64	50·8
Total - -	27	—	—	51·0

Table V.

Age of Wife at Time of Divorce.

All Marriages.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	717	16	63	34·1
„ wife -	937	18	69	35·1
Total - -	1,654	—	—	34·6

Marriages of Bachelors.

Instance of husband	654	16	60	33·4
„ wife -	891	18	61	34·8
Total - -	1,545	—	—	34·3

Marriages of Widowers.

Instance of husband	63	19	63	40·5
„ wife -	46	23	69	39·5
Total - -	109	—	—	40·1

Marriages of Spinsters.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	685	16	60	33·7
„ wife -	913	18	61	34·9
Total - -	1,598	—	—	34·4

Marriages of Widows.

Instance of husband	32	23	63	41·6
„ wife -	24	29	69	42·3
Total - -	56	—	—	41·9

Marriages of Bachelors and Spinsters.

Instance of husband	640	16	60	33·4
„ wife -	876	18	61	34·8
Total - -	1,516	—	—	34·2

Marriages of Bachelors and Widows.

Instance of husband	14	23	46	35·4
„ wife -	15	29	57	38·8
Total - -	29	—	—	37·2

Marriages of Widowers and Spinsters.

Instance of husband	45	19	57	38·1
„ wife -	37	23	49	37·4
Total - -	82	—	—	37·8

Marriages of Widowers and Widows.

Instance of husband	18	30	63	46·4
„ wife -	9	37	69	48·1
Total - -	27	—	—	46·9

Table VI.

Age of Divorced Men at Time of Marriage.

All Marriages.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	717	16	55	26·4
„ wife -	937	17	56	25·4
Total - -	1,654	—	—	25·8

Marriages of Bachelors.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	654	16	48	25·2
„ wife -	891	17	56	24·9
Total - -	1,545	—	—	25·0

Marriages of Widowers.

Instance of husband	63	22	55	38·9
„ wife -	46	24	52	34·3
Total - -	109	—	—	37·0

Marriages of Spinsters.

Instance of husband	685	16	55	26·0
„ wife -	913	17	46	25·1
Total - -	1,598	—	—	25·5

Marriages of Widows.

Instance of husband	32	21	52	35·0
„ wife -	24	21	56	35·2
Total - -	56	—	—	35·1

Marriages of Bachelors and Spinsters.

Instance of husband	640	16	48	25·2
„ wife -	876	17	46	24·8
Total - -	1,516	—	—	25·0

Marriages of Bachelors and Widows.

Instance of husband	14	21	33	26·0
„ wife -	15	21	56	30·8
Total - -	29	—	—	28·5

Marriages of Widowers and Spinsters.

Instance of husband	45	22	55	37·7
„ wife -	37	24	46	32·4
Total - -	82	—	—	35·3

Marriages of Widowers and Widows.

Instance of husband	18	28	52	41·9
„ wife -	9	32	52	42·5
Total - -	27	—	—	42·1

TABLE VII.

AGES OF MEN AT MARRIAGE.

Age of Husband.	Divorce at instance of		Total.	Percentage at each Age Group to Total.	
	Husband.	Wife.		Men divorced.	All Men married in 1892.
Under 16	—	—	—	—	—
„ 17	1	—	1	0·06	0·01
„ 18	2	2	4	0·24	0·05
„ 19	15	13	28	1·69	0·53
„ 20	33	40	73	4·41	1·83
„ 21	59	61	120	7·26	3·80
„ 25	280	417	697	42·14	31·32
„ 30	183	271	454	27·45	33·21
„ 35	74	80	154	9·31	14·12
„ 40	36	39	75	4·54	6·83
„ 45	16	8	24	1·45	3·42
„ 50	12	4	16	0·97	2·05
„ 55	5	1	6	0·36	1·29
„ 60	1	1	2	0·12	0·77
Over 60	—	—	—	—	0·77
Total -	717	937	1,654	100·00	100·00

TABLE VIII.

AGE OF DIVORCED WOMEN AT TIME OF MARRIAGE.

All Marriages.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	717	15	52	22·8
„ wife -	937	14	49	23·0
Total - -	1,654	—	—	22·9

Marriages of Bachelors.

Instance of husband	654	15	37	22·1
„ wife -	891	14	48	22·8
Total - -	1,545	—	—	22·5

Marriages of Widowers.

Instance of husband	63	18	52	30·6
„ wife -	46	17	49	27·9
Total - -	109	—	—	29·5

Marriages of Spinsters.

Instance of husband	685	15	52	22·4
„ wife -	913	14	43	22·7
Total - -	1,598	—	—	22·6

Marriages of Widows.

Instance of husband	32	22	46	32·6
„ wife -	24	25	49	34·8
Total - -	56	—	—	33·5

Marriages of Bachelors and Spinsters.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	640	15	37	22·0
„ wife -	876	14	43	22·6
Total - -	1,516	—	—	22·3

Marriages of Bachelors and Widows.

Instance of husband	14	22	34	26·6
„ wife -	15	25	48	32·5
Total - -	29	—	—	29·7

Marriages of Widowers and Spinsters.

Instance of husband	45	18	52	27·9
„ wife -	37	17	38	25·3
Total - -	82	—	—	26·8

Marriages of Widowers and Widows.

Instance of husband	18	24	46	37·2
„ wife -	9	30	49	38·6
Total - -	27	—	—	37·7

TABLE IX.

AGES OF WOMEN AT MARRIAGE.

Age of Wife.	Divorce at instance of		Total.	Percentage at each Age Group to Total.	
	Husband.	Wife.		Women divorced.	All Women married in 1892.
Under 15	—	1	1	0·06	0·00
„ 16	1	1	2	0·12	0·02
„ 17	10	7	17	1·03	0·21
„ 18	25	37	62	3·75	1·34
„ 19	72	77	149	9·01	3·55
„ 20	101	103	204	12·33	6·45
„ 21	83	121	204	12·33	8·12
„ 25	275	364	639	38·63	36·25
„ 30	104	165	269	16·26	26·03
„ 35	20	40	60	3·63	9·38
„ 40	17	16	33	2·00	4·28
„ 45	4	3	7	0·43	2·26
„ 50	4	2	6	0·36	1·15
„ 55	1	—	1	0·06	0·54
Over 55	—	—	—	—	0·42
Total -	717	937	1,654	100·00	100·00

TABLE X.

AGE at MARRIAGE and DURATION of MARRIAGE previous to DIVORCE.

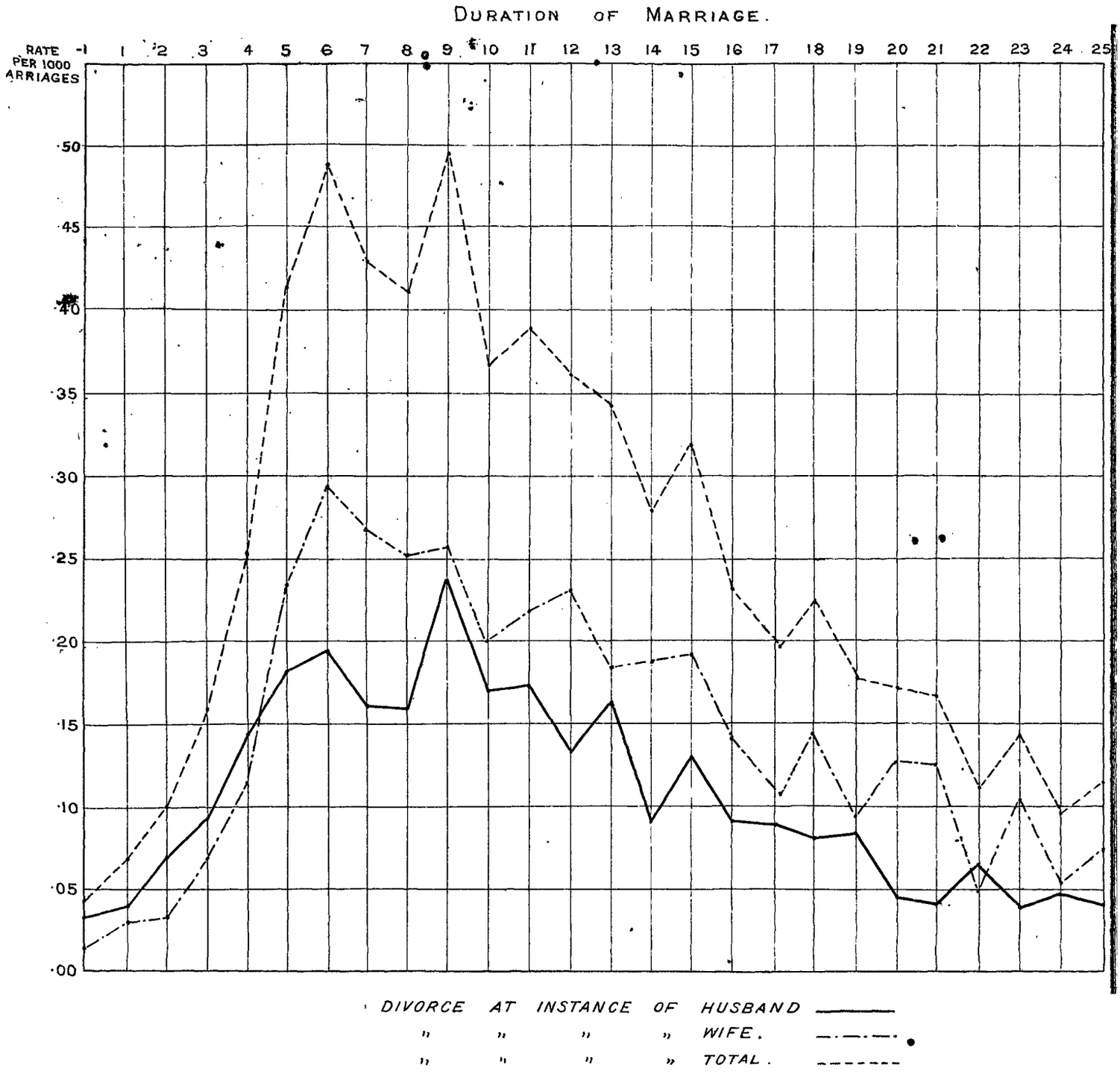
Action at Instance of Husband.		Action at Instance of Wife.	
Age of Wife at Marriage.	Average Duration.	Age of Husband at Marriage.	Average Duration.
17	11·3	17	11·0
18	12·8	18	10·2
19	13·0	19	15·2
20	11·1	20	12·5
21–24	11·5	21–24	13·0
25–29	11·0	25–29	12·1
30–34	6·7	30–34	10·9
35–39	7·9	35–39	9·9
40–44	8·6	40–44	8·3
45–49	7·0	45–49	7·9

TABLE XI.

TABLE showing FREQUENCY of DIVORCE in REGULAR and IRREGULAR MARRIAGES, and in MARRIAGES according to the RITES of different DENOMINATIONS.

—	Number of Divorces.			Number of Marriages in which there is one Divorce.		
	Instance of Husband.	Instance of Wife.	Total.	Instance of Husband.	Instance of Wife.	Total.
Regular - - - - -	619	805	1,424	444	341	193
Irregular - - - -	98	132	230	123	91	52
Established Church - - -	313	401	714	411	321	180
Free Church - - - -	202	248	450	443	361	199
United Presbyterian Church - -						
United Free Church - - -						
Roman Catholic Church - -	22	30	52	1,295	950	548
Episcopalian Church - - -	36	44	80	176	184	101
Other denominations - - -	46	82	128	431	242	155

DIVORCE RATES PER 1000 MARRIAGES.



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Waller & Graham Ltd Litho London

TABLE XII.

TABLE showing FREQUENCY of DIVORCE in SELECTED OCCUPATIONS.

Occupation.	Divorcées.			Ratio of Population to each Divorce.		
	Instance of Husband.	Instance of Wife.	Total.	Instance of Husband.	Instance of Wife.	Total.
Soldiers	26	14	40	246	457	160
Indoor servants	2	11	13	1,045	190	161
Seamen	30	46	76	681	444	269
Merchants, &c.	22	21	43	660	691	338
Hotel service	14	27	41	1,050	583	375
Police	6	7	13	873	749	403
Butchers	9	19	28	1,285	609	413
Medical practitioners	2	5	7	1,453	581	415
Bakers	17	31	48	1,248	685	442
Hemp, &c. manufacture	14	5	19	754	2,110	555
Dress manufacture	20	60	80	2,285	761	571
Grocers	15	28	43	1,677	862	585
Food trades	75	90	165	1,335	1,112	607
Clerks	14	48	62	2,751	802	621
Legal profession	6	9	15	1,600	1,066	640
Textile manufacture	53	38	91	1,225	1,708	713
Engine-drivers	10	12	22	1,724	1,437	749
Wood, furniture	23	17	40	1,464	1,980	842
Horse transport	33	26	59	1,628	2,066	911
Schoolmasters	3	5	8	2,511	1,507	942
Railway service	20	23	43	2,121	1,844	986
Iron, &c. manufacture, &c.	92	109	201	2,198	1,855	1,006
Building trades	66	51	117	2,063	2,669	1,166
Miners	45	54	99	2,897	2,460	1,322
Clergy	1	3	4	5,333	1,777	1,333
Outdoor servants	2	8	10	9,444	2,361	1,888
General labourers	16	12	28	3,439	4,585	1,965
Farming, &c.	41	42	83	4,185	4,027	2,038

APPENDIX XIX.—Statistics put in by Dr. Bisschop.

Arrondissement.	Population.		Divorce.											
	1899.	1909.	1904.		1905.		1906.		1907.		1908.		1909.	
	31st Dec.	31st Dec.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.
A. 1. 's Hertogenbosch.	276,052	304,132	4	2	—	—	—	5	1	3	1	—	3	2
2. Breda -	242,769	279,367	3	6	1	9	2	6	3	4	1	11	1	5
3. Maastricht -	149,819	179,849	—	—	1	2	—	3	1	2	2	9	—	3
4. Roermond -	165,826	190,340	1	—	—	1	1	—	3	—	—	1	—	1
Total -	834,466	953,688	8	8	2	12	2	14	8	9	4	21	4	11
B. 5. Arnhem -	281,309	322,751	9	9	14	10	19	13	7	10	14	21	10	20
6. Zutphen -	185,266	210,117	1	13	5	15	2	11	7	14	7	14	5	13
7. Tiel - -	117,897	123,923	—	2	—	1	1	4	1	4	1	4	—	5
8. Zwolle -	164,351	179,447	1	10	4	9	2	14	4	17	5	15	—	12
9. Almelo -	146,957	182,237	1	12	4	4	—	5	2	8	1	9	1	9
Total -	895,780	1,018,475	12	46	27	39	24	47	21	53	28	63	16	59
C. 10. 's Gravenhage	403,547	504,042	27	70	31	65	50	78	56	83	53	83	41	90
11. Rotterdam -	527,053	650,540	168		170		207		211		199		220	
12. Dordrecht -	175,728	187,326	6	19	4	22	6	19	2	16	2	23	5	21
13. Middelburg -	176,671	191,134	4	7	1	11	7	8	5	13	5	11	6	9
14. Zierikzee -	39,824	41,379	—	1	—	2	1	3	—	3	1	1	1	2
Total, with the exclusion of Rotterdam	1,322,623	1,574,421	37	97	36	100	64	108	63	115	61	118	53	122
D. 15. Amsterdam -	592,613	678,471	27	185	33	203	46	194	55	191	41	183	56	230
16. Alkmaar -	169,124	183,704	6	10	9	10	11	15	4	17	1	20	6	18
17. Haarlem -	217,019	261,035	3	13	10	29	12	34	10	38	11	37	14	41
18. Utrecht -	260,586	300,188	7	15	9	16	4	34	5	24	8	24	9	41
Total -	1,239,342	1,423,398	43	223	61	258	73	277	74	270	61	264	85	330
E. 19. Leeuwarden -	245,466	256,988	4	12	2	9	2	9	2	6	6	11	—	12
20. Heesenveen -	117,556	122,478	1	1	1	5	1	4	4	5	1	7	1	10
21. Groningen -	183,274	199,547	6	18	8	15	5	23	1	29	3	14	5	21
22. Winschoten -	116,328	128,422	3	2	—	7	3	3	—	1	3	4	4	3
23. Assan -	148,544	173,314	5	18	5	22	4	11	2	10	4	17	3	16
Total -	811,168	880,749	19	51	16	58	15	50	9	51	17	53	13	62
Total in the Kingdom, with the exclusion of Rotterdam -	5,103,379	5,850,731	119	425	142	467	178	496	175	498	170	519	169	584

Dissolution of Marriage after Separation *a Mensa et Thoro*												*Separatio*			
1904.		1905.		1906.		1907.		1908.		1909.		1904.		1905.	
Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.
—	—	1	—	—	—	—	—	—	—	—	—	—	4	5	7
—	—	—	—	—	1	—	1	—	—	1	—	1	2	—	3
—	—	—	—	—	—	—	—	—	—	—	—	—	1	1	1
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1
—	—	1	—	—	1	—	1	—	—	1	—	1	7	6	12
1	—	—	1	—	1	—	—	—	—	—	1	3	8	3	8
—	—	—	—	—	—	—	—	—	—	—	—	3	—	—	2
—	—	1	—	—	—	—	—	—	1	—	—	—	1	1	1
—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1
—	—	—	—	—	—	1	—	—	—	—	—	—	1	3	—
1	—	1	1	—	1	1	—	—	1	—	1	6	11	7	12
—	2	—	1	—	1	—	2	—	1	—	2	6	8	3	14
—	—	1		—	—	3		2		—	—	34		24	
—	—	—	—	—	—	—	—	—	—	—	1	1	1	1	2
—	—	—	—	—	—	—	—	—	—	—	—	—	4	2	2
—	—	1	—	—	—	—	1	—	—	—	—	—	3	—	1
—	2	1	1	—	1	—	3	—	1	—	3	7	16	6	19
—	—	—	1	1	—	—	1	—	1	3	5	8	23	3	44
—	1	—	—	—	1	—	—	1	—	—	—	1	2	—	2
1	—	—	—	3	—	—	—	—	—	—	1	3	4	6	8
1	—	—	3	—	1	2	—	—	—	1	—	8	5	4	4
2	1	—	4	4	2	2	1	1	1	4	6	20	34	13	58
1	1	—	1	—	1	—	—	1	—	1	—	2	4	—	1
—	—	—	—	—	1	—	—	—	—	—	—	—	2	—	—
—	—	—	—	—	—	1	—	1	—	1	—	—	6	—	8
—	—	—	—	—	1	—	—	—	—	—	—	2	—	2	—
—	—	—	—	—	—	—	—	—	1	—	1	3	—	1	—
1	1	—	1	—	3	1	—	2	1	2	1	7	12	3	9
4	4	3	7	4	8	4	5	3	4	7	10	41	80	35	110

a Mensa et Thoro.								Separation by							
1906.		1907.		1908.		1909.		1904.		1905.		1906.		1907.	
Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.
2	8	—	2	4	—	—	2	—	—	—	—	—	—	—	—
1	2	2	3	4	7	3	3	—	—	—	—	—	—	—	—
—	3	—	1	—	1	—	2	—	—	—	—	—	—	—	—
—	2	1	1	—	1	—	1	—	—	—	—	—	—	—	—
3	15	3	7	8	9	3	8	—	—	—	—	—	—	—	—
3	2	5	5	2	4	6	5	2	—	—	—	—	—	—	—
—	—	—	1	—	4	2	3	—	—	—	—	1	—	—	—
1	—	—	1	1	1	1	—	—	—	—	1	—	—	—	—
—	4	1	2	3	1	1	1	—	—	—	—	—	—	—	—
2	—	1	2	1	—	3	3	—	—	—	—	—	—	—	—
6	6	7	11	7	10	13	12	2	—	—	1	1	—	—	—
4	17	6	7	5	19	7	13	—	—	1	—	—	—	—	—
29		25		24		36		—	—	—	—	—	—	—	—
1	2	1	1	2	1	1	1	—	—	—	—	—	—	—	—
—	1	2	7	4	1	—	2	—	—	1	—	—	—	—	—
—	3	—	4	1	2	—	2	—	—	—	—	—	—	—	—
5	23	9	19	12	23	8	18	—	—	2	—	—	—	—	—
11	32	10	38	14	31	4	37	—	—	1	—	—	—	2	—
—	1	2	1	—	2	—	1	—	—	1	—	—	—	—	—
2	7	6	18	9	11	3	17	—	—	—	—	1	—	—	—
1	11	—	13	—	9	2	13	1	—	—	—	1	—	—	—
14	51	18	70	23	53	9	68	1	—	2	—	2	—	2	—
2	5	2	5	1	5	4	4	1	—	—	—	—	—	—	—
—	—	1	1	—	—	—	—	—	—	—	—	—	—	—	—
—	6	5	7	2	5	4	5	—	—	1	—	—	—	—	—
1	2	—	1	—	2	—	1	—	—	—	—	—	—	—	—
4	—	1	—	1	—	—	2	—	—	1	—	—	—	—	—
7	13	9	14	4	12	8	12	1	—	2	—	—	—	—	—
35	108	46	121	54	107	41	118	4	—	6	1	3	—	2	—

APPENDIX XIX.—Statistics put in by Dr. Bisschop.

Mutual Consent.				*Separatio bonorum.*													
1908.		1909.		1904.		1905.		1906.		1907.		1908.		1909.		Arrondissement.	
Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.		
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	's Hertogenbosch.	1. A.
—	—	—	—	—	—	—	[illegible]	—	1	1	—	—	—	1	—	Breda.	2.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Maastricht.	3.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Roermond.	4.
—	—	—	—	—	—	—	—	—	1	1	—	—	—	1	—	Total.	
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Arnhem.	5. B.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Zutphen.	6.
—	—	1	—	1	—	—	—	—	—	—	—	1	—	—	—	Tiel.	7.
—	—	—	—	—	—	—	—	—	1	1	—	1	—	—	—	Zwolle.	8.
1	—	—	—	—	—	—	—	—	1	—	—	—	—	—	—	Almelo.	9.
—	—	—	—	—	—	—	—	—	2	—	—	2	—	—	—	Total.	
1	—	1	—	1	—	—	—	—	—	1	—	—	—	—	—	's Gravenhage.	10. C.
—	—	—	—	1	—	2	—	—	—	1	—	—	—	—	—	Rotterdam.	11.
—	—	—	—	—	—	—	—	12	—	—	—	—	—	—	—	Dordrecht.	12.
1	—	—	—	—	—	—	—	—	—	—	—	2	—	—	—	Middelburg.	13.
—	—	—	—	1	—	—	—	1	—	—	—	—	—	—	—	Zierikzee.	14.
—	—	—	—	1	—	1	—	3	—	—	—	—	—	—	—	Total, with the exclusion of Rotterdam.	
1	—	—	—	3	—	3	—	4	—	1	—	2	—	—	—		
2	—	—	—	1	—	—	—	—	—	—	1	—	—	—	—	Amsterdam.	15. D.
1	—	1	—	—	—	—	—	—	—	—	—	—	—	—	—	Alkmaar.	16.
—	—	1	—	—	—	—	—	—	—	—	—	—	—	—	—	Haarlem.	17.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Utrecht.	18.
3	—	2	—	1	—	—	—	—	—	—	1	—	—	—	—	Total.	
—	—	—	1	—	—	—	—	—	—	—	—	—	—	—	—	Leeuwarden.	19. E.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Heeseuveen.	20.
—	—	—	—	1	—	1	—	3	—	3	—	3	—	—	—	Groningen.	21.
—	—	—	—	—	—	—	—	—	—	1	—	—	—	—	—	Winschoten.	22.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Assen.	23.
—	—	—	—	1	—	1	—	3	—	4	—	3	—	—	—	Total.	
—	—	—	1	6	—	4	—	7	3	6	1	7	—	1	—	Total in the Kingdom, with the exclusion of Rotterdam.	
5	—	3	1														

APPENDIX XX.

Returns as to Criminal and other Statistics from Ireland.

Dublin Metropolitan Police Court,
Inns Quay,
10th February 1911.

Sir,

In reply to your letter of yesterday's date, I beg to say that our statistics in cases of assault do not distinguish between assaults by males on their wives and on females not so related to them, and I am therefore unable to give you any reply to question 1 (*a*). As regards 1 (*b*) I give you the number of males convicted of such offences, and as regards 1 (*c*) I give the number of females convicted. For all practical purposes it may be assumed that the males referred to are husbands and the females wives; the error, if any, is very slight. I also give the number of maintenance orders made. The figures are for the years 1907, 1908, and 1909, and are for the whole of this police district.

I trust that this information will be sufficient for the purpose for which you require it.

I have the honour to be, Sir,
Your obedient servant,
Ernest G. Swifte,
Chief Magistrate.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
21, St. James's Square,
London.

Police District of Dublin Metropolis.

——	1907.	1908.	1909.
Males convicted of cruelty to children or neglect to maintain wives.	21	15	29
Females convicted of cruelty to children.	10	17	45
Maintenance orders made against husbands on the ground of desertion, or otherwise.	82	89	80

(No. 3882.) Dublin Castle,
3rd March 1911.

Sir,

With reference to your letter of the 22nd ultimo, addressed to the Superintendent, Judicial and Criminal Statistics Department, Dublin, I am directed by the Lord Lieutenant to state, for the information of the Royal Commission on Divorce and Matrimonial Causes, that the Irish police returns give the number of maintenance orders made by courts of summary jurisdiction against husbands on the ground of desertion or other causes.

The criminal statistics, however, do not contain particulars as to the number of husbands convicted of assaults on wives, or as to the number of husbands or wives convicted of cruelty to children; and to obtain this information it would be necessary to refer to the local police throughout Ireland, and much labour would be involved in the compilation of the statistics.

I am, Sir,
Your obedient servant,
J. B. Dougherty.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square,
London, S.W.

(No. 3/M/559.) General Register Office,
Charlemont House, Dublin,
10th February 1911.

Sir,

I beg to acknowledge the receipt of your letter of the 9th instant, and to state that a communication will be sent to you in due course on the subject referred to.

I am, Sir,
Your obedient servant,
Daniel S. Doyle,
Asst. Registrar-General.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square,
London, S.W.

(No. 3/M/559.) General Register Office,
Charlemont House, Dublin,
21st March 1911.

Sir,

With reference to my letter of the 10th ultimo, I now have pleasure in replying to the inquiries contained in your letter referred to therein.

(1) *Lunacy in Ireland.*—I would suggest that inquiry might be made from the Office of the Inspectors of Lunatics, Dublin Castle, where the latest figures are available, those obtainable from this department being for the census of 1901.

(2) *Marriages in Ireland.*—I beg to refer you to my annual report (copy enclosed) for 1909, page ix, and tables on pages 16 and 17, and to say that the ages at marriage are not furnished with the same exactness in Ireland as in England, "Full age" or "Minor" being sufficient for statutory requirements.

(3) *Criminal Statistics (Ireland).*—I beg to state that:—

(*a*) This information is not shown separately in the reports.

(*b*) There were 274 applications made by married women for maintenance in 1909, 176 orders were granted.

(*c*) Not shown in reports.

(*d*) Orders for maintenance under Children's Act—289 applications and 272 orders. (Table XVIII, Criminal Statistics, 1909.)

The annual report on Judicial Statistics (Civil and Criminal), containing the figures given above, can be obtained through His Majesty's Stationery Office. I regret that I have not a copy available to forward.

The total number of persons tried at assizes and quarter sessions for neglect and cruelty to children was 25, two of males and 23 of females.

The total number of such cases tried by summary jurisdiction was 1,299 cases, and there were 76 cases of neglecting to maintain family, &c. (Table XV.)

I beg to add that Sir R. E. Matheson's paper to which you allude was published in 1905, by Messrs. Sealy, Bryers, and Walker, 94–96, Middle Abbey Street, Dublin.

I am, Sir,
Your obedient Servant,
William J. Thompson,
Registrar-General.

The Secretary,
Royal Commission on Divorce, &c.,
Winchester House,
21, St. James's Square,
London, S.W.

APPENDIX XXI.

Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.,
8th February 1910.

DEAR MR. WATERTON,

I UNDERSTAND from the Chairman of this Commission that you have had considerable experience as one of the head clerks of the Divorce Department of the Principal Probate Registry in difficulties as to procedure in poor cases and particularly *in formâ pauperis*, and that you may be able to assist this Commission with some views or information with regard thereto, more particularly as to simplifying and cheapening procedure in such matters.

If so, I am directed to inquire whether you will be good enough to send to me a short memorandum dealing with the difficulties, if any, and any views you may entertain and method you may have to suggest as to simplifying and cheapening divorce procedure, more particularly possibly with reference to *in formâ pauperis* proceedings.

Yours very truly,
H. GORELL BARNES,
Secretary.

W. Waterton, Esq.,
Principal Probate Registry,
Somerset House,
Strand, W.C.

Principal Probate Registry,
Somerset House, London, W.C.,
10th February 1911.

DEAR MR. GORELL BARNES,

IN answer to your letter I beg to enclose a memorandum on alterations in divorce practice on the lines suggested by you. I have been sixteen years in this department and during that period have had frequent interviews with paupers, and am fully acquainted with the difficulties they have in conducting their suits. I wish to point out that the alterations I have suggested are given in outline only. If the Commission should seriously consider them I am quite prepared to give fuller details.

I am,
Yours faithfully,
WATERTON.

The Hon. H. Gorell Barnes.

Memorandum on Divorce Practice.

Contentious Department,
Principal Probate Registry,
Somerset House, London, W.C.,
10th February 1911.

I BEG to recommend to the Royal Commission on Divorce and Matrimonial Causes for their consideration the following alterations in the present practice in divorce suits with a view to simplifying and cheapening the procedure in such matters :—

(1) The establishment of a personal application and correspondence department in divorce suits on similar lines to the present personal application department in probate matters.

Under the present system, when a petitioner obtains an order to sue *in formâ pauperis*, he is obliged to get assistance to draw up his petition, affidavit and citations, as he is totally ignorant of the practice, and he must attend personally at the registry to file his papers. After the petition is filed he is again obliged to call for the sealed copies of the petition and citation. Again he must attend to make the necessary search for appearance of respondent, and apply for the registrar's certificate, and after that he must attend again to set the cause down for trial. This is the present procedure in an ordinary undefended suit where no appearance is entered. Thus the petitioner is obliged to attend no less than five times at the registry in order to set his cause down. If the petitioner resides at a considerable distance from London, the cost of the journey to London and the consequent loss of work is prohibitive, and in many cases petitions are abandoned on this account.

If the department, as I have suggested, were established, it would not be difficult for the clerks in the department to draw up the necessary papers on printed forms. The petition could be then filed, and the sealed copies for service forwarded by post. After the time for appearance had expired, a search could be made by a clerk in the department, and the cause set down for trial. Notice could then be sent to the petitioner that this had been done. I do not anticipate there would be any difficulty in drawing up the necessary forms and instructions for applicants. If this method were adopted the petitioner would only have to attend once at the registry to obtain his order to sue *in formâ pauperis*, and give his instructions for the drawing up of his petition. In many cases the applicants are unable to pay the necessary fees for counsel's certificate in pauper causes, and I think that the statement of facts could be drawn up in the registry, and the certificate given by one of the registrars. It often occurs, especially if women are the petitioners, that the respondent has gone abroad, or that his present address is unknown. This necessitates a motion to court for substituted service by advertisement. The cost of these advertisements are often totally beyond the means of the petitioner. I suggest, therefore, that the necessary papers for the motion should be drawn up in the registry, counsel assigned to the petitioner for the motion, and that the advertisements should be limited to insertion of once only in one newspaper. In support of this suggestion I may say that I have never known an appearance to be entered in answer to an advertisement.

I am assuming that these pauper causes would be undefended, and from my experience, I am quite sure that the percentage of defended causes would be extremely small, and in defended causes I do not see any difficulty in dealing with them by correspondence, provided that a department was adequately equipped for that purpose. I fully anticipate that, if this department were established, it would lead to a considerable increase in pauper cases, and that the present department would have to be enlarged. I also wish to suggest that citations in all cases should be abolished, and that the petition should be treated in the same manner as a writ in the King's Bench Division. This would simplify the practice not only in pauper cases, but in all others.

(2) *Trial of Pauper Causes.*—I wish to suggest that in each term a special day should be appointed for the trial of these causes. I do not think that they would amount to 20 in each term, and could be easily heard on one day. It frequently happens that these causes are struck out owing to the non-appearance of the petitioner, and letters are often received at the registry asking for information when causes are likely to be heard. It is impossible to give the information required, and it is useless to tell them to watch the cause list, as when parties reside at a long distance from London they have no opportunity of doing so.

W. WATERTON.

APPENDIX XXII.

(No. 69.)

SIR, Lisbon, November 19th, 1910.

I HAVE the honour, with reference to my despatch No. 64 of yesterday's date, to forward a very valuable and interesting memorandum prepared by Mr. Gaisford showing the principal provisions of the new Divorce Law.

Decisions pronounced under the law become operative at once—that is to say, after the lapse of ten days, subject to the restrictions as to re-marriage laid down in Article 55. No provision is made to prevent the institution of proceedings, or reversal of a decision, in cases where the petitioner has, himself or herself, been guilty of any of the offences for which divorce or separation is permitted.

The publication of an enactment which creates such a fundamental change in the condition of social life has naturally produced a profound impression.

I have the honour to be, with the highest respect,
Sir,
Your most obedient humble servant,
The Right Hon. (Signed) F. H. VILLIERS.
Sir Edward Grey, Bart., M.P., &c.

PORTUGUESE LAW OF DIVORCE, NOVEMBER 4TH, 1910.

**Article* 4. The legitimate causes for divorce are: 1, adultery; 2, conviction of one of the major crimes† specified in Articles 55 and 57 of the Penal Code; 3, ill-treatment; 4, abandonment of home for not less than three years; 5, absence for not less than four years during which the absentee gives no tidings of him or herself; 6, incurable lunacy, three years after the date on which insanity has been declared by the competent authorities; 7, separation *de facto* by mutual consent for ten years; 8, inveterate gambling habits; 9, incurable contagious disease or any disease which induces sexual aberration.

§ . Divorce for cause No. 2 cannot be admitted if the petitioner has been convicted of complicity in the crime committed by the defendant.

§ . Referring to cause No. 9, the nature and character of the disease must have been verified beforehand.

Article 6. The plaintiff shall bring forward in the petition some one of the causes specified in Article 4 as a legitimate cause for divorce, and shall produce the marriage certificate and also a copy of the judicial sentence if the petition is based on causes No. 2 or No. 6.

Article 8, § 2. There cannot be more than five witnesses to each fact alleged, and the total number of witnesses on each side cannot exceed 30.

§ . The decree of divorce shall contain a summons from the judge to both parties to confer with him respecting the destiny of the children under age, their maintenance, and any other point it may be necessary to settle with regard to them.

Article 19, § 2. A divorced woman cannot use the name or names she has derived from her husband.

The Children.

Article 21. The children shall for preference be confided to the parent in whose favour divorce has been pronounced. When this is obviously undesirable they shall be put under the charge of some third person, preferably a near relative.

Article 22. Nevertheless the father and mother retain their parental rights until deprived of them,‡ and the right to see to the education of the children.

Article 24. Both father and mother are obliged to contribute towards the maintenance of the children in proportion to their means. Such contribution is a first charge on the parents' estate.

The Estate.

Article 26. Divorce always entails separation of property, each party obtaining full rights over that which remains in his or her possession.

The separation and division of the estate can be settled *à l'amiable*.

Article 27. The guilty party loses all benefits derived from the innocent party, whether received under the ante-nuptial contract or subsequent to it. Similarly the innocent party retains all such benefits. The innocent party can, however, renounce such right, but should there be children only, in the latter's favour.

Alimony.

Article 29. Either party can claim alimony from the other if in need thereof. The amount of such alimony must be settled in accordance with the needs of the person receiving it, but can never exceed one-third of the net income of the other.

Article 31. The amount of alimony can be reduced at the request of the person contributing it if unable to continue to pay the original amount or if the other party no longer needs it. Similarly the amount can be increased if the receiving party is in need, or if the circumstances of the other have improved, unless such improvement is derived from a subsequent marriage.

Article 32. The right to receive or the obligation to provide alimony ceases when the receiving party contracts another marriage or becomes through immoral behaviour unworthy to receive it, and when the contributing party is no longer able to provide it.

Article 33. The contracting of a fresh marriage by the contributing party does not exempt him or her from the obligation to contribute alimony, nor can it be used as a pretext to have the amount reduced.

Article 34. If the decree of divorce is not pronounced the petitioner cannot renew his suit for two years on the same count, but is not prevented from doing so on a different one.

The non-success of a divorce suit brought on account of causes 1, 2, 3, 4, 8, 9 constitutes presumption of grave injury to the defendant, and is a sufficient basis for the latter to bring an action petitioning for divorce or separation of persons and property.

Divorce by Mutual Consent.

Article 35. Divorce by mutual consent can only be obtained by persons of over 25 years of age who have been married for at least two years.

Article 36. The following documents must be exhibited:—(1) Certificate of marriage; (2) birth certificate; (3) specific and detailed declaration of all property; (4) agreement come to with regard to the possession of the children under age; (5) declaration as to the sum which each parent will contribute towards the maintenance and education of the children; (6) certified copy of ante-nuptial contract.

Article 37. The petition is disallowed if the terms of Article 36 are not complied with. If the petition is allowed the judge shall summon the parties to appear before him, and if they are not reconciled and persist in their determination, he shall cause a deed of agreement to be drawn up in the presence of two men of good faith designated by himself, who shall sign as witnesses.

Article 39. The judge shall ratify the deed and authorise provisional divorce for one year.

§ . This provisional divorce does not allow the parties to exercise any right resulting from the dissolution of the marriage either with regard to persons or estate.

Article 40. After the year has elapsed the parties shall, spontaneously or at the instance of one of them, appear once more in person before the judge and declare that they adhere to their determination. If at this juncture a reconciliation is effected the provisional divorce shall be annulled; if not, their agreement shall be ratified once more, and definite divorce will then be decreed.

* Articles not mentioned in this summary are not of effective importance.

† Such as murder, assaults, robbery, offences against morality.

‡ Presumably under the provisions of Article 21.

Article 41. Parties who, having petitioned for divorce by mutual consent, are reconciled, cannot obtain it on a subsequent occasion, but they are at liberty to sue for a divorce in the ordinary way.

Separation of Persons and Estate.

Article 43. Separation is open to the contending parties on the same grounds as in actions for divorce,*

Article 44. The innocent party can opt for divorce or separation.

Article 46. Either of the parties can, five years after the sentence authorising separation has been passed, claim the conversion of the separation order into a decree of divorce.

Article 47. The separation of parties who have become reconciled does not prevent one of them from bringing a divorce action against the other, nor does it prevent both parties from petitioning for a divorce by mutual consent.

General Provisions.

Article 54. No provision can be inserted in an antenuptial contract or a will which prevents the beneficiary from suing for a divorce or imposes any penalty for so doing.

Article 55. A divorced woman cannot contract a fresh marriage until a year has elapsed since the dissolution of her previous marriage; the husband can remarry after six months.

§ 1. This article is inoperative in cases where divorce has been granted for causes 6, 7, or 9.

§ 2. The party proved to be suffering from one of the diseases mentioned in Article 4, is forbidden to contract a fresh marriage, but the other party can do so after the period stipulated in this Article.

Article 56. The provisions of the Civil Code (Article 101, &c.)† are applicable to the child born of a divorced woman within 300 days of the dissolution of her marriage.

Article 57. Matrimony legitimizes all children born previous to the marriage of their parents.

Article 58. A child born in wedlock and repudiated by the husband can also be legitimized by the subsequent marriage of its parents.

Article 59. The legitimate children of divorced persons can succeed their parents or grandparents without distinction of sex or age even if they are the issue of different unions.

Article 60. The children of divorced persons of between 18 and 21 years shall be considered of full age for all legal purposes.

(No. 84.)

SIR, Lisbon, December 30th, 1910.

WITH reference to my despatch No. 69 of the 19th ultimo, enclosing a memorandum respecting the new Portugese Divorce Law, I have the honour to forward translation of a decree, published in the "Diario do Governo," of the 22nd instant, which provides that any period passed since a declaration of incurable lunacy shall be taken into account for the fulfilment of the condition laid down in section IV. of the law—namely, that three years must elapse before proceedings for divorce can be taken.

I have the honour to be, with the highest respect, Sir,

Your most obedient humble servant,

(Signed) F. H. VILLIERS.

The Right Hon.
Sir Edward Grey, Bart., M.P.,
&c., &c., &c.

Enclosure in Sir F. VILLIERS' No. 84 of December 30th, 1910.

(Diario do Governo of December 22nd, 1910.)

(Translation.)

Decree.

Whereas it is necessary to explain No. 7‡ of Article IV. of the decree, with force of law, of November 3, 1910, in order that, in the absence of a sentence for privation of civil rights owing to insanity at the time when incurable lunacy was declared, the party affected shall not be obliged to wait for three years more before instituting proceedings, which would be to the grave detriment of him or herself and the children, and without the least advantage to the other party, and would not further the objects the legislator had in view in fixing that period, the Provisional Government of the Portuguese Republic make known in the name of the Republic, that the following has been decreed to have the force of law:—

Article I.—For the purposes of No. 7 of Article IV. of the decree, with force of law, of the 3rd of November 1910, the judge shall, when possible, designate, in the sentence therein mentioned, the minimum space of time of incurable lunacy already elapsed, the assent of the competent experts being essential therefor; and as soon as three years of incurable lunacy have passed, the other party may bring an action for divorce.

§ . In cases where it is mentioned in the action for privation of civil rights that three years of incurable lunacy have elapsed, the action for divorce may be instituted at any time from the day immediately following that on which the sentence for privation of civil rights has been filed.

Article II.—This decree will come into force immediately, and will be submitted for consideration to the Constituent Assembly.

Article III.—Legislation to the contrary is hereby revoked.

It is therefore ordained that all the authorities to whom the knowledge and execution of this decree may appertain shall fulfil it and cause it to be fulfilled in its integrity.

The ministers of all the departments shall cause it to be printed, published, and circulated.

Given at the seat of the Government of the Republic this 21st day of December 1910.

JOAQUIM THEOPHILI BRAGA.
AFFONSO COSTA.
JOSE RELVAS.
ANTONIO XAVIER CORREIA BARRETO.
AMARO DE AZEVEDO GOMES.
BERNANDINO MACHADO.
MANOEL DE BRITO CAMACHO.

APPENDIX XXIII.

Royal Commission on Divorce and Matrimonial Causes,
Winchester House, 21, St. James's Square, S.W.,

SIR, 22nd June 1910.

LORD GORELL, the Chairman of this Commission, has recently received a letter in which it is stated that in India adultery has been made a criminal offence.

It would be of considerable assistance to the Commissioners, to whom some such suggestion has been made by various witnesses, if you would be good enough to inform me whether this is so, and to give

* On the same grounds and with the same effect as regards children and property as in actions for divorce.

† Provisions for establishing legitimacy.

‡ No. 6 in the summary forwarded in despatch No. 69 of November 19th, 1910.

me any details of such law; and either be good enough to inform me whether I can obtain, or yourself supply me with, reports, if any, from the Government of India upon it, and any further documents, as, for instance, expressions of opinion from commissioners or magistrates and others with regard thereto, which would be of interest and assistance to the Commission.

I am, Sir,
Your obedient servant,
H. GORELL BARNES,
Secretary.

The Under Secretary of State for India in Council,
St. James's Park, S.W.

India Office, Whitehall, S.W.,
27th July 1910.

SIR,

IN reply to your letter of the 22nd ultimo, on the subject of the treatment of adultery in Indian law, I am directed by Viscount Morley to transmit, for the information of the Chairman of the Royal Commission on Divorce and Matrimonial Causes, a copy of a Note by the Legal Adviser to the Secretary of State.

It is presumed that the texts of the Indian Law Commission Report, Indian Penal Code, and the Indian Divorce Act are accessible to the Royal Commission. Search has been made in the records of this Office for reports or expressions of opinion by magistrates or judges on the results of the change introduced into the Indian Penal Code in 1860, but without result. Lord Morley hopes, however, that the Note furnished may be of assistance to the Commissioners.

I am, Sir,
Your obedient servant,
COLIN G. CAMPBELL.

The Secretary,
Royal Commission on Divorce,
Winchester House, St. James's Square, S.W.

Note on Adultery as an Offence under the Indian Penal Code.

Under the Indian Penal Code the offence of adultery is made punishable, not as regards the husband or the wife, but in the person of the stranger or third party, the man who knowing or having reason to believe a woman to be the wife of another, has sexual intercourse with her. (*See* sec. 497 I.P.C.)

The guilty wife is not punishable as an abettor, nor is the guilty husband if he commits adultery with an unmarried woman.

Adultery is a criminal offence only in the case of a man, who has illicit intercourse with a woman who is, and whom the man knows or has reason to believe to be, the wife of another man, without the consent or connivance of the husband.

The question whether adultery should be made a criminal offence was carefully and exhaustively considered by the Indian Law Commission, of which Lord (then Mr.) Macaulay was chairman. A large body of evidence on the subject was collected, as we are told in Note Q. to the Report, and on consideration the Commissioners decided that adultery should, so far as the Anglo-Indian law was concerned, be classed as a civil injury only, and not as a criminal offence.

The reason on which this opinion was mainly based was that, having regard to the social conditions prevailing amongst Indians (both Mahomedans and Hindoos) and also among Europeans and Eurasians, the law making adultery punishable as a criminal offence was likely to prove quite ineffective as a remedial measure. It was thought that the upper classes of society would not have recourse to the law as a protection from injury or as a vindication of family honour, while the lower classes would use the criminal court as a means of enforcing compensation to the injured husband for the loss of his wife's services. Twenty-three years afterwards, when the report of the Law Commission came to be considered by the Select Committee appointed by the Legislative Council of India, the Committee (Sir Barnes Peacock being the chairman) took a different view. The Committee thought that adultery as now restrictively defined in the Indian Penal Code should be made a criminal offence. Sir Barnes Peacock as vice-chairman of the Council, in moving that the Bill as founded on the Report of the Select Committee should be passed, said, "The law provided protection to a man "in respect to his property, but that was a small "matter as compared with the protection which a man "required in respect of what was far nearer and "dearer to him, namely, his family honour. A man "who entered another's house and robbed him of his "property would be punished, and he saw no reason "why a man who seduced another's wife and thereby "rendered him miserable for life ought not to be "punished also."

There can be no question, I think, that the experience of 50 years, the period during which adultery has been punishable as a criminal offence, has justified the wisdom and soundness of the opinion of Lord Macaulay's Commission, rather than that of the Select Committee who framed the law as it now stands. This law, which makes adultery punishable with imprisonment of either description (*i.e.*, rigorous or simple) for a term which may extend to five years, or with fine, or with both, has in effect remained a dead letter. Very rarely, indeed, has recourse been made to this law as a protection from injury to, or in vindication of family honour. It is safe to say that the higher classes, whether Indian or European, have, as a rule, avoided the criminal court as a form for seeking reparation for family dishonour. So far as these classes are concerned, honour has been vindicated, or reparation obtained in other ways.

During 30 years of legal experience in India, I remember only one case where a charge of adultery came before the criminal sessions of the High Court. An Indian attorney was tried and convicted before the High Court on a charge of adultery with a niece, a young married woman, who was living in his house. It was a gross case, no doubt, but it was the very grossness and notoriety of the offence which compelled the family, very reluctantly, to take criminal proceedings.

Occasionally, persons of the lower classes, both Indians and Eurasians, have brought charges of adultery in the magistrates' courts, but even in these cases, very rarely have the charges proceeded to trial and conviction. Almost invariably an arrangement has been arrived at, and the case compounded for a money payment.

The fact is, the section has been used, as the Indian Law Commissioners anticipated, as a means of obtaining compensation for what was in reality regarded as a civil injury only.

There are certain special circumstances which have, perhaps, contributed to this result.

Nine years after the Penal Code became law, the Divorce Act was passed. This was Act 4 of 1869, which affects Christian marriages only. By this Act the English law as regards adultery as a ground for dissolution of marriages or for judicial separation was introduced to India, and the Christian husband whose wife was guilty of adultery preferred to seek relief under this Act, rather than have recourse to the criminal court for the purpose of punishing the adulterers.

As regards Hindu and Mahomedan society, amongst the upper classes, adultery on the part of a wife is of very rare occurrence. The seclusion of the Purdah system tends, no doubt, to preserve the purity of the family life, so far as the females are concerned. The Mahomedan law allows the husband to divorce an erring or faithless wife in a simple and easy manner, without recourse to the law courts. The Hindu law, on the other hand, does not provide for divorce, but regards marriage as indissoluble, but rigid caste rules and social customs provide drastic methods for punishing a faithless wife. On the whole, therefore, Indian experience would seem hardly to justify the proposal to make adultery a criminal offence under the English law.

(Signed) S. G. SALE.

28th June 1910.

APPENDIX XXIV.

Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.,
14th November 1910.

SIR,

As you are perhaps aware, a Royal Commission was appointed by his late Majesty—

"to inquire into the present state of the law "and the administration thereof in divorce and "matrimonial causes and applications for separa- "tion orders, especially with regard to the "position of the poorer classes in relation "thereto, and the subject of the publication "of reports of such causes and applications; "and to report whether any, and what, amend- "ments should be made in such law, or the "administration thereof, or with regard to the "publication of such reports."

Questions have been raised with reference to payments for maintenance under orders made under the Summary Jurisdiction (Married Women) Act, 1895.

A suggestion has been made to the Commissioners that, in view of the great difficulty frequently found by married women in enforcing payment of the amount which they are by the orders of magistrates or justices to receive, it might be advisable that the magistrates or justices should have power to make an order to attach the wages of a respondent husband against whom such an order as aforesaid has been made, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the court appointed for that purpose.

On the other hand, it has been stated that, if such a course were adopted, the employee's employment might be jeopardised, since the employers, in such cases, might take the view that it was undesirable to retain in their service an employee, in respect of whose wages it would be necessary that they should deal in the manner above indicated.

The matter is one to which the Commissioners attach considerable importance, and one upon which they feel that it would be of advantage and should prove of assistance to them to have the views of the London County Council, since it has so many employees under its direction, with regard to the suggestion above stated.

I have, therefore, been directed by the Chairman, on behalf of the Commissioners, to communicate with you to inquire whether you would be good enough to inform me what are the views entertained by the London County Council upon the matter, in order that I may be in a position to bring them before the Commissioners.

I am, Sir,
Your obedient Servant,
H. GORELL BARNES,
Secretary.

The Clerk of the Council,
London County Council,
Spring Gardens, S.W.

London County Council,
(47146.) County Hall, Spring Gardens, S.W.,
16th November 1910.

SIR,

I HAVE to acknowledge the receipt of your letter of the 14th instant as to payments for maintenance under orders made under the Summary Jurisdiction (Married Women) Act, 1895. The request of the Royal Commission shall be laid before the appropriate Committee of the Council early next week, and I will communicate with you again as soon as a decision shall have been arrived at.

I am, Sir,
Your obedient Servant,
G. L. GOMME,
Clerk of the Council.

The Secretary of the Royal Commission
on Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

London County Council,
(50088.) County Hall, Spring Gardens, S.W.,
30th November 1910.

SIR,

THE Council has had under consideration your letter of the 14th instant, asking for the opinion of the Council on the proposal to empower magistrates and justices to make an order to attach the wages of a respondent husband, against whom an order for maintenance under the Summary Jurisdiction (Married Women) Act, 1895, has been made, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the court appointed for that purpose.

The Council at its meeting on the 29th instant passed a resolution on the subject as follows:—

That the Council does not desire to express an opinion upon the proposal that magistrates and justices should be empowered to make an order to attach the wages of a respondent husband, against whom an order for maintenance under the Summary Jurisdiction (Married Women) Act, 1895, has been made, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the court appointed for that purpose; and that the Royal Commission on Divorce and Matrimonial Causes be so informed.

I am, Sir,
Your obedient Servant,
G. L. GOMME,
Clerk of the Council.

The Secretary, Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.,
10th November 1910.

SIR,

As you are perhaps aware, a Royal Commission was appointed by His late Majesty—

"to inquire into the present state of the law "and the administration thereof in divorce and "matrimonial causes and applications for separa- "tion orders, especially with regard to the position "of the poorer classes in relation thereto, and the "subject of the publication of reports of such "causes and applications; and to report whether "any, and what, amendments should be made in "such law, or the administration thereof, or with "regard to the publication of such reports."

Questions have been raised with reference to payments for maintenance under orders made under the Summary Jurisdiction (Married Women) Act, 1895.

A suggestion has been made to the Commissioners that, in view of the great difficulty frequently found by married women in enforcing payment of the amount which they are by the orders of magistrates or justices to receive, it might be advisable that the magistrates or justices should have power to make an order to attach the wages of a respondent husband against whom such an order as aforesaid has been made, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the court appointed for that purpose.

On the other hand, it has been stated that, if such a course were adopted, the employee's employment might be jeopardised, since the employers, in such cases, might take the view that it was undesirable to retain in their service an employee, in respect of whose wages it would be necessary that they should deal in the manner above indicated.

The matter is one to which the Commissioners attach considerable importance, and one upon which they feel that it would be of advantage and should prove of assistance to them to have the views of various corporations with numerous employees with regard to the suggestion above stated.

I have, therefore, been directed by the Chairman, on behalf of the Commissioners, to communicate with you to inquire whether you would be good enough to inform me what are the views entertained by the Corporation on the matter, in order that I may be in a position to bring them before the Commissioners.

I am, Sir,
Your obedient Servant,
H. GORELL BARNES,
Secretary.

To the town clerks of—

Liverpool.	Birmingham.
Bristol.	Manchester.
Hull.	Salford.
Leeds.	Sheffield.
Leicester.	West Ham.
Newcastle.	Bradford.
Nottingham.	

Town Clerk's Office (Leasing Department),
Municipal Buildings, Liverpool,
22nd November 1910.

SIR,

I DULY submitted to the Committee dealing with the matter your circular letter of the 10th instant asking the Corporation for an expression of their views on certain questions under the consideration of the Commission with reference to the payment for maintenance under orders made under the Summary Jurisdiction (Married Women) Act, 1895.

I was instructed by the Committee to inform you that they do *not* approve of the suggestions contained in your letter.

I am, Sir,
Your obedient Servant,
EDWARD R. PICKMERE,
Town Clerk.

H. Gorell Barnes, Esq.,
Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.

Town Hall, Hull,
22nd November 1910.

SIR,

ADVERTING to your letter of the 10th instant with reference to the proposal that has been made before the Royal Commission on Divorce and Matrimonial Causes to empower justices to make an order to attach the wages of a respondent husband in the hands of the employers, I beg to inform you that my Council does not meet until the 1st December. The subject of the letter is one which it appears to me the Council would be most likely to refer to one of their Committees, no doubt chosing one which has the control of a large amount of labour. My object in writing to you is to ask you whether the delay in answering your question entailed by this method would lead to the Corporation's reply, if any, being useless to the Commission.

I am, Sir,
Your obedient Servant,
H. A. LEAROYD,
Town Clerk.

The Hon. H. Gorell Barnes,
Secretary,
Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.

Town Hall, Hull,
2nd December 1910.

SIR,

I SUBMITTED your letter of the 10th November to the Council at their meeting yesterday, when they referred the same to the Parliamentary Committee for consideration and report. I will bring the matter before the Parliamentary Committee at their next meeting, and after the Committee's report has been presented to the Council I will inform you of the views entertained by the Corporation upon the matter to which you refer.

I am, Sir,
Your obedient Servant,
H. A. LEAROYD,
Town Clerk.

The Hon. H. Gorell Barnes,
Secretary,
Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.

Town Hall, Hull,
9th January 1911.

Royal Commission on Divorce and Matrimonial Causes.

SIR,

ADVERTING to your letter of the 10th November last, I beg to set out below the terms of a resolution which was passed by the Parliamentary Committee of this Corporation and duly confirmed by the City Council at their meeting held last Thursday:—

"That this Corporation are of opinion that in "case any person against whom an order has "been made for the maintenance of his wife, or "his wife and children, shall make default for a "period of one month to comply with the terms "of such order, the court should have power, on "the application of the wife, to direct the "employer of such person to pay to the wife "from time to time such part of his wages as "may be specified in such order."

I am, Sir,
Your obedient Servant,
H. A. LEAROYD,
Town Clerk.

The Hon. H. Gorell Barnes,
Secretary,
Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, London, S.W.

Town Clerk's Office, Town Hall, Leeds,
6th January 1911.

SIR,

IN reply to your circular letter of the 20th November last, I beg to enclose copy of a resolution passed by the Finance Committee of the City Council, and approved by the latter on Wednesday last.

I am, Sir,
Your obedient Servant,
ROBERT E. FOX,
Town Clerk.

The Secretary,
Royal Commission on Divorce,
Winchester House,
21, James' Square, S.W.

Enclosure.

Finance Committee,
9th December 1910.

Submitted letter from the Secretary to the Royal Commission on Divorce and Matrimonial Cause asking for the views of the Corporation on a suggestio made to the Commissioners that the justices shoul have power to make an order to attach the wages of respondent husband against whom an order to main tain his wife has been obtained, and to direct tha notice may be given to the employer of such husban that a certain proportion of his wages should be pai direct to his wife or to some officer of the cour appointed for that purpose.

Resolved:—

That, in the opinion of the Committee, the Council as employers of labour, ought not to be called upon t undertake the duty and responsibility referred to i the letter from the Commissioners.

Town Hall, Leicester,
Town Clerk's Office.
SIR, 29th November 1910.

IN reference to your letter of the 10th instant, upon the subject of attachment of wages, I placed the matter before my Finance Committee. I am requested to inform you that, in the opinion of the Committee, the suggested power to attach wages would *not* be desirable, and they are unable to see how it would prove effective.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., H. A. PRITCHARD,
Secretary, Town Clerk.
Royal Commission on Divorce and
Matrimonial Causes,
Winchester House,
21, St. James' Square, London, S.W.

Town Clerk's Office, Town Hall,
Newcastle-upon-Tyne,
SIR, 25th November 1910.

YOUR letter of the 10th instant has been considered by the Town Improvement and Streets Committee of my Corporation, who supervise the largest number of the workmen of the Corporation, and they desire me to inform you that, in their opinion, it is very desirable that magistrates should have power to make orders attaching the wages of respondent husbands in order to enforce payments under orders made under the Married Women Act of 1895.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., A. M. OLIVER,
Secretary, Town Clerk.
Royal Commission on Divorce,
21, St. James' Square, London, S.W.

The Council House, Birmingham,
Town Clerk's Office,
November 23rd, 1910.

Royal Commission on Divorce and Matrimonial Causes.

SIR,

I HAVE laid your letter of the 10th instant before the General Purposes Committee of the Birmingham City Council, and am instructed to inform you that the Committee see no reason for any alteration in the present law with respect to payment under maintenance orders.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., E. V. HILEY.
Winchester House, Town Clerk.
21, St. James' Square, S.W.

Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.,
DEAR SIR, November 30th, 1910.

I HAVE had an opportunity to-day of placing your letter of the 23rd instant before the Commissioners, and am directed to state that your letter hardly seems to them to be directed expressly to the question whether, if they were to recommend that power should be given to attach a portion of a husband's wages, such recommendation would be agreed to by employers, and would be found to jeopardise the man's employment, the possibility of which is suggested in my previous letter of 10th inst. If you can communicate to me any views on this point, it would be useful.

H. GORELL BARNES,
The Town Clerk, Town Clerk's Office, Secretary.
The Council House, Birmingham.

The Council House, Birmingham,
Town Clerk's Office,
DEAR SIR, December 7th, 1910.

REFERRING to your letter of the 30th ultimo, I have communicated with the chief officials of the several municipal departments in which labour is largely employed upon the point mentioned by you, and the general opinion appears to be that while in the case of reasonable employers the attachment of a portion of a husband's wages under a maintenance order should not in itself be allowed to jeopardise the man's employment, it would in practice be found that a man who had no such order against him would be preferred.

In some instances where men have the handling of monies, or, as in the case of gas meter and water inspectors, where men have to visit a private house during the absence of the master, it would be *undesirable* to employ a person with a stigma on his moral character.

Yours faithfully,
The Hon. H. Gorell Barnes, E. V. HILEY,
Secretary, Town Clerk.
Royal Commission on Divorce, &c.

Town Hall, Manchester,
SIR, November 15th, 1910.

I HAVE to acknowledge receipt of your letter of the 10th instant, which shall be laid before the Parliamentary Sub-Committee of the Corporation.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., THOMAS HUDSON,
Secretary, Town Clerk.
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James' Square, London, S.W.

Town Hall, Manchester,
DEAR SIR, 1st February 1911.

Royal Commission on Divorce and Matrimonial Causes.

I AM desired to inform you that the Parliamentary Sub-Committee of this Corporation have had under consideration your letter of November 10th last, and at their meeting on the 13th ultimo they adopted the following resolution:—

"Resolved,—
"That the Corporation are of opinion that "magistrates should have power to make an "order against employers to retain and pay out "of the wages of a respondent husband to the "parties entitled the amount receivable under "an order under the Summary Jurisdiction "(Married Women) Act, 1895, in the event of "the respondent husband being in default."

The proceedings of the Committee were approved by the City Council at its meeting held to-day.

Yours faithfully,
H. Gorell Barnes, Esq., THOMAS HUDSON,
Secretary, Town Clerk.
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, London, S.W.

Town Hall, Sheffield,
SIR, 15th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

I DULY received your circular letter of the 10th instant, which I am laying before my Corporation. As soon as I have obtained their instructions upon it, I will write you further.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., R. M. PRESCOTT,
Secretary, Town Clerk.
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, London, S.W.

Town Hall, Sheffield,
SIR, 13th January 1911.

Royal Commission on Divorce and Matrimonial Causes.

I DULY received your circular letter of the 10th November last, stating that a suggestion had been made to the Commissioners that in view of the great difficulty frequently found by married women in enforcing payment of the amount which they are, by the orders of magistrates or justices, to receive, it might be advisable that the magistrates or justices should have power to make an order to attach the wages of a respondent husband against whom such an order had been made, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the Court appointed for that purpose.

As desired, the matter has been brought to the notice of the Establishment Committee of the Council of this city, who have passed a resolution as follows:—

"That in the opinion of this Committee it is "desirable that the City Council should *not approve* "of the proposed change in the law,"

and such resolution was approved and adopted by the Council.

I am, Sir,
Your obedient Servant.
The Secretary, R. M. PRESCOTT.
Royal Commission on Divorce Town Clerk.
and Matrimonial Causes,
Winchester House,
21, St. James's Square, London, S.W.

Town Hall, West Ham, E.,
SIR, 20th December 1910.

I AM directed by the Council to inform you that they have under consideration your circular letter of the 16th ultimo, with reference to a suggestion that payments for maintenance under separation orders should be enforced by magistrate's order to attach the wages of a respondent husband, and to state in reply that the Council do not desire to offer any opinion thereon.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., FRED. E. HILLEARY.
Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

Town Hall, Bradford,
SIR, 14th November 1910.

Attachment of Wages.

I BEG to acknowledge the receipt of your letter of the 12th instant with reference to this matter, and to state that it shall receive attention.

I am, Sir,
Your obedient Servant,
The Secretary, FREDERICK STEVENS,
Royal Commission on Divorce, Town Clerk.
Winchester House,
21, St. James's Square, London, S.W.

Town Hall, Bradford,
SIR, 16th January 1911.

YOUR letter of the 10th November last, asking for the views of the Corporation with regard to the difficulty arising on the enforcement by married women of the payments awarded by justices in cases of separation, has been carefully considered by the Corporation, who do not feel that they can express any opinion on the general question, but the practice has recently been adopted here under which the payments are made to the court, and are taken out by the women, thereby to some extent relieving the difficulties which frequently arise as regards collection by the women themselves.

I am, Sir,
Your obedient Servant,
FREDERICK STEVENS,
The Secretary, Town Clerk.
Royal Commission on Divorce,
Winchester House,
21, St. James's Square, London, S.W.

Winchester House,
21, St. James's Square, S.W.,
SIR, 10th November 1910.

As you are perhaps aware, a Royal Commission was appointed by His late Majesty—

"to inquire into the present state of the law and "the administration thereof in divorce and matri- "monial causes and applications for separation "orders, especially with regard to the position of "the poorer classes in relation thereto, and the "subject of the publication of reports of such "causes and applications; and to report whether "any, and what, amendments should be made in "such law, or the administration thereof, or with "regard to the publication of such reports."

Questions have been raised with reference to payments for maintenance under orders made under the Summary Jurisdiction (Married Women) Act, 1895.

A suggestion has been made to the Commissioners that, in view of the great difficulty frequently found by married women in enforcing payment of the amount which they are by the orders of magistrates or justices to receive, it might be advisable that the magistrates or justices should have power to make an order to attach the wages of a respondent husband against whom such an order as aforesaid has been made, and to direct that notice may be sent to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the court appointed for that purpose.

On the other hand, it has been stated that, if such a course were adopted, the employee's employment might be jeopardised, since the employers, in such cases, might take the view that it was undesirable to retain in their service an employee in respect of whose wages it would be necessary that they should deal in the manner above indicated.

The matter is one to which the Commissioners attach considerable importance, and one upon which they feel that it would be of advantage and should prove of assistance to them to have the views of bodies such as your federation with regard to the suggestion above stated.

I have, therefore, been directed by the Chairman, on behalf of the Commissioners, to communicate with you to inquire whether you would be good enough to inform me what are the views entertained by members of your federation upon the matter, in order that I may be in a position to bring them before the Commissioners.

I am, Sir,
Your obedient Servant,
H. GORELL BARNES,
Secretary.

To the Secretaries of—
The National Federation of Building Trades.
The Drapers' Chamber of Trade.
The Mining Association of Great Britain.
The Cleveland Mine Owners' Association.
The North of England Iron and Steel Manufacturers' Association.
The Engineering Employers' Federation.
The Shipbuilding Employers' Federation.
The Federation of Master Cotton Spinners' Association.
The North and North-East Lancashire Cotton Spinners and Manufacturers' Association.
The Huddersfield and District Woollen Manufacturers' Association.
The Incorporated Federated Associations of Boot and Shoe Manufacturers of Great Britain and Ireland.

The National Federation of Merchant Tailors.
The Shipping Federation, Limited.
The Master Printers and Allied Trades' Association.
The Staffordshire Potteries Manufacturers' Association.
The National Association of Master Bakers and Confectioners of Great Britain and Ireland.
The Co-operative Wholesale Society, Limited.

The National Federation of Building Trades' Employers of Great Britain and Ireland,
Koh-i-Noor House, Kingsway,
SIR, London, W.C., 14th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

I BEG to acknowledge receipt of your inquiry of 10th November.

As my Committee does not meet until 13th December, and I presume an early reply is desired, I am laying your communication before my President, who may desire to consult some of his colleagues, and will write you further as soon as possible.

Yours faithfully,
A. G. WHITE,
Secretary.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, S.W.

The National Federation of Building Trades' Employers of Great Britain and Ireland,
Koh-i-Noor House, Kingsway,
SIR, London, W.C., 16th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

IN further reply to your letter of 10th November. The subject matter of your inquiry has not, so far, engaged the attention of this federation, and to fully ascertain it would take some time, since the question would have to be considered by our various branches, and finally dealt with at a general meeting.

We think, however, that the following observations will sufficiently indicate the views likely to be held by our members in regard to the suggestion "that "magistrates or justices should have power to make "an order to attach the wages of a respondent "husband against whom such an order as aforesaid "has been made, and to direct that notice may be "given to the employer of such husband that a "certain proportion of his wages should be paid direct "to the applicant wife or to some officer of the court "appointed for that purpose."

So far as the building trade is concerned, the employment is a very fluctuating one; men are taken on frequently in large numbers for short periods, and paid off as soon as done with. Any man can be discharged or leave at an hour's notice.

The workmen move about the country a good deal, following the chances of employment. No system of discharge or character notes obtains in this industry, so that men once discharged are quickly lost sight of.

Under these circumstances we think the difficulty of following up a man who desired to evade an order of the kind suggested would be such as to make the order futile, and, in our opinion, the suggestion would be impracticable in the building trade.

As regards the suggestion that the employee's employment might be jeopardised, we think it is quite likely that it would, because there is usually a surplusage of labour in the building trade, and employers would naturally, therefore, avoid those workmen in respect of whose wages it would be necessary that they should deal in the manner above indicated, and because workmen, who as a consequence of such an order felt they were not to receive the whole of their earnings, would be likely to let their "output" fall off to correspond, and so prejudice employers against them.

Yours faithfully,
SAMUEL SMETHURST,
President.
A. G. WHITE,
Secretary.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, S.W.

The Mining Association of Great Britain,
18, King Street, Wigan,
DEAR SIR, 15th November 1910.

I AM unable to give you the collective opinion of the coal owners on the subject of your letter until I can submit it to a meeting of the executive council of the Mining Association of Great Britain. It is very likely that within the next few weeks I shall have business necessitating such a meeting, at which there will be present representatives from the different mining districts of the kingdom, and I should then be able to get the general opinion.

My own view is that, provided the employers are not put to any expense, and are kept clear of any complications with reference to the Truck Acts, the course suggested in your letter would not interfere with a man's employment. It must be remembered that a man who refused, except under compulsion, to pay towards the maintenance of his wife, might not be in other respects a very desirable employé.

If you will refer to section 10 of the Coal Mines Regulation Act, 1887, you will see that there is a somewhat analogous provision with reference to the payment of school fees.

Believe me,
Very faithfully yours,
THOS. RATCLIFFE ELLIS.

H. Gorell Barnes, Esq.,
Royal Commission on Divorce and Matrimonial Causes,
21, St. James's Square, London, S.W.

The Mining Association of Great Britain,
18, King Street, Wigan,
SIR, 1st December 1910.

AT the meeting of the Parliamentary Committee of the Mining Association on Tuesday last, I read your letter of the 10th ultimo, and also the letter which I wrote to you in reply, and was instructed to say that the Committee approved what I had written.

Faithfully yours,
THOS. RATCLIFFE ELLIS.

H. Gorell Barnes, Esq.,
Royal Commission on Divorce and Matrimonial Causes,
21, St. James's Square, London, S.W.

Cleveland Mine Owners' Association,
Middlesbrough,
SIR, November 22nd, 1910.

I RECEIVED your letter of the 10th November on the subject of attaching wages. The matter will come before a meeting of the Cleveland Mine Owners at an early date, after which you may expect an expression of their views to be sent to you.

I am, Sir,
Your obedient Servant,
JOHN DENNINGTON,
Secretary,

H. Gorell Barnes, Esq., Secretary,
Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, London, S.W.

Cleveland Mine Owners' Association,
Middlesbrough,
SIR, 17th January 1911.

I HAVE brought your circular letter of the 10th November 1910 before this association, and I am requested to state that the Cleveland Mine Owners *are not* in favour of making deductions from men's wages in connection with magisterial orders and similar matters.

I am, Sir,
Your obedient Servant,
JOHN DENNINGTON,
Secretary.

H. Gorell Barnes, Esq.,
Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, London, S.W.

North of England Iron and Steel
Manufacturers' Association,
Royal Exchange, Middlesbrough,
DEAR SIR, November 21, 1910.

I HAVE submitted your communication of the 10th inst. to the members of the above-named association, and their unanimous opinion is that an arrangement such as is suggested would be distinctly objectionable, and it would certainly be opposed by them. Further, it is their view that it would undoubtedly be detrimental to the interests of an employee in respect of whose wages a magistrates' order of the nature described was made.

Yours faithfully,
J. R. WINPENNY,
Secretary.

H. Gorell Barnes, Esq., Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

The Engineering Employers' Federation,
24, Abingdon Street, Westminster, S.W.,
DEAR SIR, 12th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

I AM in receipt of your letter of 10th November in regard to this matter, which is having attention.

Yours faithfully,
ALLAN M. SMITH,
Secretary.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

The Engineering Employers' Federation,
24, Abingdon Street, Westminster, S.W.,
DEAR SIR, 15th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

I HAVE had an opportunity of consulting the Chairman in regard to your letter of 10th November, who has instructed that same should be brought before the next meeting of the committee.

Yours faithfully,
ALLAN M. SMITH,
Secretary.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

The Engineering Employers' Federation,
24, Abingdon Street, Westminster, S.W.,
DEAR SIR, 26th November 1910.

Royal Commission on Divorce and Matrimonial Causes

YOUR letter of 10th November has been brought before a meeting of my committee, and I am desired to say that they are of opinion that employers in the engineering industry would look with disfavour upon the suggestion contained in your letter.

Yours faithfully,
ALLAN M. SMITH,
Secretary.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

The Shipbuilding Employers' Federation,
Fyfe Chambers,
105, West George Street, Glasgow,
DEAR SIR, 14th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

WE duly received your Circular of the 10th inst., which will be laid before the first meeting of the Committee.

Yours *faithfully*,
THOMAS BRIGGART,
HARTLEY B. MOTHERSOLE,
Joint Secretaries.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, London, S.W.

The Shipbuilding Employers' Federation,
Fyfe Chambers,
105, West George Street, Glasgow.
DEAR SIR, 24th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

YOUR letter of the 10th inst. has now been considered by the Executive Board of this Federation.

The Board are favourable to the suggestion that magistrates should have the power to make an order to attach the wages of a respondent husband and to direct his employer to pay a certain proportion of his wages to the applicant wife or an officer of court. We were instructed to advise you of this, and to state that the employers will be pleased to assist in the manner indicated.

Yours faithfully,
THOMAS BRIGGART,
HARTLEY B. MOTHERSOLE,
Joint Secretaries.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, London, S.W.

The Federation of Master Cotton Spinners'
Associations, Ltd.,
Commercial Buildings, 15, Cross Street,
DEAR SIR, Manchester, 18th November 1910.

I BEG to acknowledge receipt of your letter of the 10th inst., which will be placed before my committee in due course.

Yours faithfully,
JOHN SMETHURST,
Secretary.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, London, S.W.

The North and North-East Lancashire Cotton
Spinners and Manufacturers Association
12, Exchange Street, Manchester,
DEAR SIR, February 2nd, 1911.

I BROUGHT your letter of the 10th November last before the central committee of this association at a meeting held on Tuesday last, and I was instructed to inform you that this association is of opinion that the suggestion made to the Commissioners that magistrates or justices should have power to make an order to attach the wages of a respondent husband is *most objectionable*, and might easily become a precedent for the attachment of wages of an employee for payment of debts owing to tradesmen, but if the suggestion made to the Commissioners were adopted the committee of this association do not think the employee's employment would be likely to be jeopardised in such cases.

Yours faithfully,
F. A. HARGREAVES,
For self and Co-Secretary.

H. Gorell Barnes, Esq.,
Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, London, S.W.

The Incorporated Federated Associations of
Boot and Shoe Manufacturers of
Great Britain and Ireland,
41, Friar Street, Leicester,
25th November 1910.

DEAR SIR,

I AM obliged by your letter of November 10th requesting information as to the views entertained by the members of the Boot and Shoe Manufacturers' Federation with regard to the suggestion made to the Royal Commission on Divorce and Matrimonial Causes that magistrates should be empowered to make orders to attach the wages of workmen being respondent against whom maintenance orders have been made, whereby a proportion of their wages would be ordered to be paid direct by their employers to or for the benefit of the wives of such workmen.

I have discussed the matter with the President and Vice-President of the federation, and have ascertained the views thereon of representative members in the principal centres of the industry, and I find that as employers of labour they are unanimously of opinion that the attachment of wages as suggested would aggravate the difficulty experienced in enforcing maintenance orders against respondent husbands, because they think it would be objected to by employers generally as likely to add to the labour difficulties they have to contend with as employers, and would in consequence cause the workmen concerned to be frequently out of employment, and further some employers, whilst sympathising with the wronged wives of such workmen, think it would be an injustice to men engaged on certain definite terms to deduct from their wages without their consent.

I am also desired to say that the opinion is generally expressed that, as a matter of public policy, it is very desirable there should be as few occasions as possble for employers to make deductions from the wages of their workpeople, and that the tendency of recent actual or proposed legislation upon this subject is in the direction of restricting or abolishing deductions.

I am, Sir, your obedient Servant,
A. E. W. CHAMBERLIN,
Secretary.

H. Gorell Barnes, Esq., Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

The National Federation of Merchant Taylors,
8 and 10, York Street, Manchester.
16th November 1910.

SIR,

I AM in due receipt of your inquiry as to the advisability of conferring power upon magistrates or justices to make an order to attach the wages of a respondent husband and enforcing such order by directing the employers of such husband to pay a certain proportion of his wages direct to the applicant wife.

I am instructed to say that while the sympathies of our members are with the unhappy and ill-used partners of such marriage, they feel assured if the husband's employers were notified and his wages attached, his employment would certainly be jeopardised, and in many cases would lead to prompt dismissal.

Our members fully recognise the difficulty experienced in enforcing many orders, but are decidedly of opinion the respondent husband's employment should not be imperilled.

I am, Sir, yours truly,
JOHN GORDON,
Hon. Secretary.

H. Gorell Barnes, Esq.,
Secretary,
Royal Commission on Divorce
and Matrimonial Causes.

The Shipping Federation, Limited,
Exchange Chambers,
24, St. Mary Axe, London, E.C.,
12th November 1910.

SIR,

I BEG to acknowledge receipt of your letter of yesterday in reference to the Royal Commission on Divorce and Matrimonial Causes, which I will submit to the Executive Council of the Shipping Federation next week.

Yours faithfully,
MICHAEL BRETT,
Secretary.

H. Gorell Barnes, Esq.,
21, St. James's Square, S.W.

The Shipping Federation, Limited,
Exchange Chambers,
24, St. Mary Axe, London, E.C.,
1st December 1910.

DEAR SIR,

REFERRING to my letter of the 12th ulto., I have duly submitted your letter of the 10th ulto. to the Executive Council of the Shipping Federation, who see no objection to the proposal that a certain proportion of the wages of a seaman should be attached for the benefit of his wife.

Yours faithfully,
MICHAEL BRETT,
Secretary.

H. Gorell Barnes, Esq.,
21, St. James's Square, S.W.

The Master Printers' and Allied Trades Association
24, Holborn, London, E.C.,
18th November 1910.

SIR,

IN reply to yours of the 10th inst. addressed to Major Vane Stow, I have consulted many of the leading master printers in the United Kingdom with reference to the suggestion that the wages of a respondent husband might be attached in cases where an order has been for payment of maintenance to the wife. Universal sympathy is expressed with wives who are unable to enforce payment for such allowances, but some objection is not unnaturally felt by employers to any interference with the payment of wages to their workpeople, and the opinion unanimously expressed is that the making of such attachment orders would inevitably result, in a great majority of cases, not only in the husband being discharged from his situation, but in his finding difficulty in obtaining work elsewhere.

I am, Sir, yours obediently,
REGINALD J. LAKE,
Secretary.

The Hon. H. Gorell Barnes,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

Staffordshire Potteries Manufacturers' Association,
Secretary's Office, Piccadilly, Tunstall,
12th November 1910.

SIR,

I BEG to acknowledge the receipt of your letter of the 10th inst., which I will lay before my association at their next meeting and afterwards write you again.

I am, Sir,
Your obedient Servant,
ARTHUR P. LLEWELLYN.

The Secretary, Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
St. James's Square, S.W.

Staffordshire Potteries Manufacturers' Association,
Secretary's Office, Piccadilly, Tunstall,
28th November 1910.

SIR,

WITH further reference to your letter of the 10th instant, I have ascertained the views of some of the leading members of this association regarding the proposal to give power to magistrates or justices to make an order to attach the wages of a respondent husband against whom an order had been made under the Summary Jurisdiction (Married Women) Act, 1895, and in their opinion such a course would, as is suggested in your letter might be the case, seriously prejudice any operative against whom such an order might be made.

In the first place, an employee who knew that a proportion of his wages would be retained by the

employer at the end of the week (for whatever purpose), would not perform his duties with the same zeal as one who would receive the full amount he earned, and such an employee would, of course, not be desirable.

Further, it is thought to be scarcely fair to the employers to expect them to act as collectors of the money.

I am, Sir,
Your obedient Servant,
ARTHUR P. LLEWELLYN.

The Secretary, Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
St. James's Square, S.W.

Co-operative Wholesale Society, Ltd.,
Central Offices, 1, Balloon Street, Manchester,
SIR, 22nd November 1910.

Royal Commission on Divorce and Matrimonial Causes.

IN answer to your circular letter, dated November 10th, we may explain that only our general committee here can act on behalf of the society, and, of course, there is a very great divergence of opinion amongst our members on this question, which has been very much before the public for some time past. Therefore, as a committee, they prefer not to express any opinion about it.

Yours truly,
Pro Committee,
THOMAS BRODRICK,
Secretary.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, S.W.

APPENDIX XXV.

A (1).

Church House, Westminster,
DEAR MADAM, London, S.W.

THE Mothers' Union has been permitted to send three witnesses to the Royal Commission on Divorce, who are likely to be called after Whitsuntide. Two of them will testify to the opinions of a large number of the working women of England and Wales, as expressed at meetings held to consider the question of the extension of facilities or grounds for obtaining divorce.

We are further anxious to send in as many names as possible of wives and mothers of the educated classes, who are also entitled to be heard on this matter which so vitally affects the womanhood of our country. Such names need not be in any way restricted to members of the Mothers' Union.

A protest is enclosed, with space for ten signatures, and you are earnestly requested to obtain as many signatures as you can from personal friends or others. These will be laid before the Royal Commission by our third witness in support of our protest against any extension of the divorce laws.

The forms should be returned, not later than May 20th, to the Hon. Mrs. Evelyn Hubbard, Church House, Westminster, S.W., who will supply additional forms as required.

Yours truly,
ALICE CHICHESTER,
Central President of the Mothers' Union

Protest.

I desire to add my earnest protest against the extension of facilities for divorce. I believe that to cheapen or extend the grounds for divorce would be against the moral and social interests of rich and poor alike, and would encourage the seeking of divorce for trivial reasons.

Signatures:

Collected by

N.B.—No one should sign one of these papers more than once.

A (2).

MOTHERS' UNION.

Resolution.

The members and associates present earnestly protest against any extension of the facilities or grounds for obtaining divorce, believing that any such extension would lower the ideal of marriage in the minds of the people and injure the home life of the country.

Number present
Parish
Diocese
Name of Branch Secretary
or Enrolling Member.
Date

B.

FORM OF PROTEST FROM THE CHURCH OF ENGLAND WOMEN'S HELP SOCIETY, SIGNED BY OVER 2,000 MEMBERS THEREOF.

Church House, Dean's Yard,
Westminster, S.W.

WE, members of the Church of England Women's Help Society, desire to make an earnest protest against the extension of facilities for divorce, believing that to cheapen or extend the grounds for divorce would be detrimental to the moral and social interests of both rich and poor, and would tend to encourage the seeking of divorce for trivial reasons.

Signatures:—

C.

RESOLUTIONS FROM CLERICAL BODIES.

(1) Ashton-under-Lyne Rural Deanery.
(2) Burford Ruri-decanal Chapter.
(3) Burford Ruri-decanal Conference (Hereford Diocese).
(4) Burnley Rural Deanery.
(5) Charterhouse Mission Southwark (Working Men).
(6) Chester Rural Deanery.
(7) Corringham Rural Deanery.
(8) Finsbury Ruri-decanal Conference.
(9) Leicester Rural Deanery.
(10) Liverpool "Churchmen's Conference."
(11) Manchester Church Social Workers.
(12) Manchester Diocesan Lay Readers' Union.
(13) Paddington Rural Deanery.
(14) Powder Ruri-decanal Conference.
(15) St. George's Association of Manchester and Salford Church Rescue and Preventive Society.
(16) St. John's Truro Bible Classes.
(17) Stepney Ruri-decanal Conference.
(18) Upper House of the Convocation of Canterbury.
(19) West Drayton Church Council.
(20) West Ham Rural Deanery Conference.
(21*a*) Westminster Catholic Federation..
(21*b*) Westminster Catholic Federation
(22) Wirral Ruri-decanal Conference.
(23) Women Church Workers.
(24) Worcester Diocesan Conference.

(1.)

Bardsley Vicarage,
Ashton-under-Lyne,
DEAR SIR, 23rd June 1910

I AM requested by the Chapter of the Rural Deanery of Ashton-under-Lyne to forward to you the subjoined resolution.

Yours faithfully,
C. BERESFORD KNOX,
Chapter Clerk.

"That this Chapter believing in the sacredness of the marriage tie protests against any extension of the

causes and facilities for divorce and advocates the repeal of the divorce laws."

(2.)

Coveley Rectory, Tenbury,
DEAR SIR, 23rd September 1910.

AT the request of the Burford Ruri-decanal Chapter I send you a copy of a resolution passed by them unanimously at their meeting of yesterday's date.

Yours faithfully,
JAMES B. JOYCE,
Rural Dean.

Secretary,
Divorce Commission.

"That the meeting of the Burford Ruri-decanal Chapter hereby desires to enter its strongest protest to any increased facilities for divorce: and, further, believes the only true solution of present difficulties to be the repeal of the Divorce Act of 1857; and copies of this resolution be sent to the Bishop, the Secretary of the Divorce Commission, and the members of the division."

(3.)

The Rectory, Rochford, Tenbury.
DEAR SIR, 9th December 1910.

I HAVE been requested to forward you the two resolutions passed at a meeting of the Burford Ruri-decanal Conference (Hereford Diocese) on Wednesday last. The vote was unanimous, the numbers present being clerics 9, laymen 15.

I am, dear Sir,
Faithfully yours,
J. TOMSON,
Hon. Sec. B.R.C.

The Secretary,
Royal Commission on Divorce, &c.

II.—The Christian Law of Marriage, and Divorce.

The Rev. T. Outram Marshall will move:—(1) "That, in the interests of the purity of the family and "for the unimpaired maintenance of the teaching of the "Church as to the indissolubility of holy matrimony "and the reality of the relationship of affinity, it is the "duty of the clergy and laity alike to insist on the "observance of that teaching in its entirety by members "of the Church, whatever may be allowed to the "contrary by civil law or public opinion."

(2) "That this Conference insists that the State "has no authority to dictate the terms of admission to "Holy Communion in the Church of England, and "that any such claim must be resisted."

(4.)

DIOCESE OF MANCHESTER, RURAL DEANERY OF BURNLEY, REV. A. W. M. WEATHERBY, RURAL DEAN.

Worsthorne Vicarage, near Burnley,
MY DEAR SIR, Lancashire, 18th November 1910.

I AM directed most respectfully to convey to you, sir, the terms of a resolution which was passed unanimously by the clergy and official laity of the Rural Deanery of Burnley, in the Diocese of Manchester, at their annual conference held on the 17th instant.

The terms of the resolution are as follows:—

"That it is the duty of Churchpeople not merely to uphold the sanctity of the marriage law of the Church, but to use their utmost endeavours to restore the marriage law of the land to a Christian level."

I am, Sir,
Your most obedient servant,
(Rev.) J. A. LATHAM,
Chapter Clerk.

To the Secretary,
H.M. Commission on Divorce.

(5.)

The Charterhouse Mission,
40, Tabard Street, Southwark, S.E.,
SIR, 29th June 1910.

I HEREWITH enclose copy of a resolution passed unanimously at a meeting of about 40 working men, held on Sunday afternoon last in our mission hall. The Rev. F. G. Croom in the chair.

I was requested to forward the same to you to be put in as evidence before the Royal Commission now sitting.

Yours faithfully,
PERCY S. WILSON,
Hon. Sec.

To the Secretary
of the Royal Commission on Divorce.

Resolution unanimously passed at a meeting of about 40 working men, held in the Charterhouse Mission Hall, on Sunday, June 26th, 1910. The Rev. F. G. Croom, missioner, in the chair:—

"That this meeting of working men earnestly opposes the granting of any further facilities for divorce. Rather than that divorce should be made easier for the poor, it should be made harder for the rich."

PERCY S. WILSON,
Hon. Sec.

(6.)

St. John's Rectory, Chester,
DEAR SIR, 11th July 1910.

AT a chapter meeting of the Rural Deanery of Chester, the following resolution was passed unanimously:—"That this chapter expresses its earnest hope "that the Royal Commission now sitting will not "make any recommendations which involve an increase "of facilities for divorce," and I was asked to forward a copy of the resolution to the Commissioners.

I am, your obedient servant,
S. COOPER SCOTT,
Rural Dean.

To the Secretary
of the Royal Commission.

(7.)

East Stockwith Vicarage,
Gainsborough,
SIR, 5th November 1910.

I AM desired by the Ruri-decanal Chapter of Corringham in the Diocese of Lincoln, of which I am clerk, to send you the accompanying resolution which was carried unanimously by the chapter on Wednesday, November 2nd, inst.

I remain,
Yours faithfully,
J. GURNHILL,
Chap. Clerk.

To the Hon. Henry Gorell Barnes,
Secretary of the Royal Commission on Divorce.

Resolved:—

I. "That this meeting of the clergy of the Rural Deanery of Corringham in chapter assembled hears with growing concern of the proposals now being considered to extend the grounds of divorce, and earnestly trusts that such proposals will meet with strenuous resistance on the part of Church people throughout the country, as being highly dangerous to the cause of religion, public morality, and family life."

(8.)

Thorndon, Antrim Street,
Haverstock Hill, N.W.,
MY LORD, 31st May 1910.

I, as honorary lay secretary to the Finsbury Ruri-decanal Conference, have been instructed to inform you that, at a meeting of the conference held yesterday, the Rev. Prebendary Perry presiding, the

following resolution was passed and ordered to be sent to your Lordship:—

"That this conference, while recognising that inequalities exist as to facilities for divorce between rich and poor, considers that the right way to remove such inequalities is to prohibit divorce altogether."

I am, my Lord,
Your obedient servant,
ST. JOHN BROWNE.

The Right Honourable Lord Gorell, P.C.,
Chairman of the Royal Commission on Divorce
and Matrimonial Causes,
Winchester House, S.W.

(9.)

St. Mary's Vicarage, Leicester.

At a meeting of the Ruri-decanal Conference of the Rural Deanery of Christianity (or Leicester) the following resolutions were carried unanimously, on Monday, July 11th, 1910:—

"(1) That there should be no further facilities for divorce.

"(2) That if any change in the law is made, the present Divorce Act should be repealed.

"(3) That separation orders should be only granted for a limited period."

J. T. NANCE,
Rural Dean.

(10.)

32, Clevedon St., Liverpool, S.,
6th October 1910.

DEAR SIR,

I AM instructed to forward you the enclosed resolution, which I trust is in order.

I am, honourable Sir,
Yours faithfully,
E. DOWNEY, Hon. Sec.,
"Churchmen's Conference."

"The Churchmen's Conference,"
Knotty Ash, Liverpool,
17th September 1910.

"The 'Churchmen's Conference' feeling that divorce is so chief an evil and contrary to the teaching of our Lord Jesus Christ, strongly hopes for the repeal of the Act of 1857 which sanctions divorce."

Carried *nem. con.*

(11.)

UNIVERSITY OF MANCHESTER.

SIR, 27th April 1910.

AT a meeting of 600 Church social workers—men and women—held in Manchester on Thursday, March 31st, to consider the question of Christian marriage, the accompanying resolution was moved and carried unanimously. This we are requested by our committee to forward.

We have the honour to be,
Your obedient servants,
CUTHBERT E. A. CLAYTON,
WILBY M. L. ROW,
Honorary Secretaries.

To the Hon. H. Gorell Barnes,
Secretary to the Royal Commission on Divorce,
Winchester House,
21, St. James's Square, S.W.

Resolution passed March 31st at a Meeting of 600 Church Social Workers in Manchester.

"1. That this meeting of Church social workers, believing that the Divorce Act of 1857 has caused grave injury to family life and to the morality of the nation, strongly protests against any extension of divorce facilities.

"2. From wide experience of actual facts of life among the poor, it is also in favour of the amendment of the methods of judicial separation, especially as to the following points:—

(*a*) Equality of cause for both sexes.
(*b*) Payment of maintenance money through official or court, and not direct from one party to the other.

"3. That this meeting, while advocating as a deterrent the necessity of names being made known, strongly *protests against the publication of details as being most* corrupting to the youth of the nation."

(12.)

MANCHESTER DIOCESAN LAY READERS' UNION.

Patron: The LORD BISHOP.

Cliff Point, Lower Broughton Road,
Manchester,
SIR, 25th October 1910.

I AM instructed to inform you that at a meeting of our union held on 22nd October the following resolution was unanimously adopted.

I am,
Yours faithfully,
HENRY BROXALL,
The Secretary, Hon. Sec.
The Royal Commission on Divorce.

"That this quarterly conference of the Lay Readers' Union of the Manchester diocese, recognising that the law of Christ and the Church provides for the indissolubility of the marriage law—except by death—protests against divorce and especially against any increased facilities for the same, and earnestly desires that, when possible, the Divorce Act of 1857 may be repealed."

(13.)

RURAL DEANERY OF PADDINGTON.
CLERICAL AND LAY CONFERENCE.

Divorce Act of 1857.

At a meeting of the above conference held on Tuesday, 21st June 1910, the Rev. Prebendary F. Gurdon, Rural Dean, presiding, the following resolution was proposed, seconded, and carried with one dissentient:—

Resolution:

"That this conference of clergy and laity, convened for the purpose of considering the question of divorce, strongly protests against any extension of facilities for divorce and expresses an earnest desire for the repeal of the Divorce Act of 1857."

We are requested to send a copy of the above resolution to every member of the Royal Commission on Divorce and to the Lord Bishop of London.

We are,
Very faithfully yours,
CECIL E. WHITE,
Hon. Clerical Secretary,
170, Gloucester Terrace, W.
JAS. A. MCINTYRE,
Hon. Lay Secretary,
92, Inverness Terrace, W.

(14.)

The Vicarage, S. Clement,
DEAR SIR, Truro, 4th April 1910.

I ENCLOSE copies of resolutions passed at the Ruri-decanal Conference of the Deanery of Powder.

Yours faithfully,
W. E. GRAVES,
Rural Dean.

Copy of resolution passed unanimously at the Ruri-decanal Conference of the Deanery of Powder, Truro, 1st April 1910.

"That in the opinion of this Conference the publication of the evidence tendered at the sessions of the Commission in the daily press is likely to have an injurious effect on public morality, and that if any evidence is so published it should be under strict supervision."

Resolution :

"That the Ruri-decanal Conference of the Deanery of Powder in the Diocese of Truro in session assembled deplore the existing facilities for divorce and would prefer to see the Act repealed than its provisions extended to the county courts of the country, and desire to support His Grace the Archbishop of York in any efforts he may be able to make on the Commission in furthering the cause of morality."

From the Deanery of Powder,
Truro.

(15.)

Homeleigh, Range Road,
Whalley Range, Manchester,
2nd May 1910.

DEAR SIR,

I AM instructed to send you the enclosed resolution for the Royal Commission on Divorce, passed at the annual joint conference of the St. George's Association (White Cross League) and the Manchester and Salford Church Rescue and Preventive Society.

I remain,
Yours obediently,
W. H. NEWETT.

The Hon. H. Gorell Barnes,
Sec., Royal Commission on Divorce,
Winchester House, 21, St. James's Square,
London, S.W.

Resolution passed April 22nd, 1910, by members of joint conference of St. George's Association (Local Branch of White Cross League), and of Manchester and Salford Church Rescue and Preventive Society.

"That the members of this conference, believing that the existing divorce laws have not only proved injurious to the morality of our people, but have also weakened the national conception of the binding nature of the marriage tie, are of opinion that the remedy for the inequality of facilities for rich and poor is to be found in the repeal of the Divorce Act of 1857, and not in the extension of its operations.

"The members of the conference, believing that judicial separation should be maintained in the interests of the general morality of the nation, further beg the Royal Commission to do its utmost to secure wise and much needed amendment in the methods of granting the same, and especially on the following points :—

(*a*) An equal standard of purity for both sexes.
(*b*) Payment through court or official, instead of direct, as at present.
(*c*) The compulsory suppression in the public press of *details* of cases liable to corrupt the youth of the nation—the publication of *names* only being necessary as a deterrent."

(16.)

Penarth, Truro, Cornwall,
22nd September 1910.

SIR,

MAY I please ask you to do the proper thing with the enclosed petition, and may I also say the signatures are those of working men, with three exceptions.

Thanking you,
I remain, Sir,
Yours faithfully,
A. DAINE.

To the Hon. H. Gorell Barnes.

WE the undersigned members of the Community of the Epiphany and St. John's, Truro, Bible classes, wish to express our earnest desire that as a result of the Royal Commission on Divorce there will be no extension of facilities and grounds for divorce as such would be most harmful to the home-life and morality of the nation. We further express our conviction that the Divorce Act should be repealed and the sanctity of marriage fully recognised.

A. Daine, Penarth, Truro.
Jules Vincent, Petherton, Truro.
Thomas F. Webber, 18, New Bridge Street, Truro.
W. J. Webb, 4, St. Dominic Street.
F. Tabb, 4, Cook's Row, Truro.
A. Grose, Lotar Row, Truro.
W. A. Parker, 5, Cook's Row, Truro.
George Paxol, St. Dominic Street, Truro.
A. H. Skinner, 13, St. Dominic Street, Truro.
Hy. Dryden, 89, Kemoyn Street, Truro.
James Kier, 18, New Bridge Street, Truro.
James Bailey, 3, The Avenue, Truro.
William Collett, 21, St. Clements Terrace, Truro.
Edwin Wearne, 36, St. Clements Street, Truro.
Wm. Alford, 3, Penrose Cottages, Moresh Rd., Truro.
Percy Baron, 4, Daniel Road, Truro.
James Henry Kastell, Trethellan, Truro.
William G. N. Earthy, Malpas Road, Truro.
Sydney Luly Rushworth, 36, Charles Street.
Richard Joseph Warren, 4, Walsingham Place, Truro.
Ernest Henry Rouse, 26, Lemon Street.
James Annear, 5, Lemon Row, Truro.
William Stephens, 3, Carclew, Truro.
Robert Williams, 1, Carclew Place, Truro.
Lewis Charles Gatley, 20, Carclew Street, Truro.
Archibald Trudgen, 31, Carclew Street.
Ernest Alfred Truscott, 23, Carclew Street, Truro.
Henry Barnicoat, 47, Charles Street, Truro.

(17.)

The Rectory, Stepney, E.,
22nd June 1911.

DEAR SIR,

THE following resolution was passed at a meeting of the Stepney Ruri-decanal Conference of clergy and laity held on Monday, June 20, and I was asked to send a copy to the Divorce Commission :—

"That this conference protests against any extension of facilities for divorce, feeling confident that there is no real demand for it from the poorer classes, and calls for the repeal of the Divorce Act of 1857."

I am, very faithfully yours,
G. C. WILTON,
Rector of Stepney and Rural Dean.

The Secretary,
Divorce Commission.

(18.)

UPPER HOUSE OF THE CONVOCATION OF CANTERBURY.

Lambeth Palace, S.E.,
17th February 1911.

DEAR Mr. BARNES,

I THINK the Royal Commissioners ought to have before them a copy of the resolutions which have this week been passed with virtually complete unanimity by the Upper House of the Convocation of Canterbury—that is to say by the whole diocesan episcopate of the province. The Bishop of Hereford took exception to details in resolutions 1 and 4, but this was the only breach in full unanimity. It will be observed that the wording is careful. The first resolution does not say that the re-marriage of the innocent party in church is impossible, but that it ought not to be claimable as a right. Similarly in resolution 4 the Bishops do not say that there ought to be no change in the direction of making it possible for a poor man to obtain such a divorce as a rich man could obtain. But they deprecate the multiplication of courts possessing divorce jurisdiction as the means of making divorce easier. There are other points in the resolutions which I could explain if necessary, but I think they are probably sufficiently clear.

I am,
Yours very truly,
RANDALL CANTUAR.

Resolutions.

"1. That the right of parishioners to claim the use of the church or the services of the incumbent for the solemnisation of marriages ought not to extend to divorced persons whether innocent or guilty.

"2. That persons domiciled elsewhere than in England who have obtained a divorce in their own country on grounds not acknowledged by English law ought not to be married in any English churches, and cannot be so married without causing just offence to the consciences of English Churchmen.

"3. That this House opposes, as detrimental to the social, moral, and religious interests of the nation, any extension of the grounds on which divorce can now be legally granted.

"4. That while holding to the plain principle of justice that poverty ought not to be in itself a bar to obtaining all the protection which just laws afford, this House strongly deprecates any attempt to increase the general facilities for divorce by the multiplication of courts possessing divorce jurisdiction.

"5. That this House desires to press for such amendments of the law as may be necessary in order to give practical effect to any of the foregoing resolutions."

February 16th, 1911.

(19.)

The Vicarage, West Drayton,
SIR, Middlesex, 25th June 1910.

I AM directed by the Church Council of West Drayton to forward to you the resolution given on the other side. The council consists of twelve members—the vicar and two churchwardens being members *ex officio*, and the other nine being elected annually at Easter by all parishioners who have been confirmed.

Eight members were present at the meeting on June 20th; of the eight, six were elected members, and the resolution was passed with one dissentient.

I am, Sir,
Your obedient servant,
A. W. S. A. ROW,
Chairman of the meeting.

The Secretary of the
Divorce Commission, London.

Resolution passed by the West Drayton Church Council on June 20th, 1910.

"The Church Council of West Drayton protests against any extension of either the grounds or of the facilities for divorce, believing that indissolubility of marriage is the best guarantee for the maintenance of religion, family life and public morality. It further is of opinion in regard to the alleged inequalities as between rich and poor, which are advanced as a reason for a wider extension of divorce, that it would be better for religion, the State, and the family that the existing divorce laws should be repealed."

(20.)

Pelly Memorial School, West Ham,
MY LORD, 21st June 1910.

AT a conference of duly elected Churchmen of every parish church and mission within the county borough of West Ham, held on Friday, June 10th, 1910, at which about 120 representatives were present, consideration was given to the subject of the present divorce laws. I have been instructed to forward your Lordship a copy of a resolution passed unanimously at this meeting, namely: "This conference is opposed to "the granting of any facilities for divorce, and "would rather approve the repeal of the Divorce Act "of 1857."

Believe me to be,
Faithfully yours,
D. FASSAM.

The President of the
Royal Commission on Divorce.

(21*a*.)

37, Norfolk Street, Strand, W.C.,
DEAR SIR, 10th November 1910.

I BEG to enclose you a copy of a resolution which was passed unanimously by the central council of this Federation at the last council meeting.

I am, yours faithfully,
W. P. MARA.

"That the council of the Westminster Catholic Federation, representing mainly Catholic working men and women, is of opinion that the suggested extension of facilities for divorce would tend to shatter the domestic life of the nation and would be morally most injurious."

(21*b*.)

37, Norfolk Street, Strand, W.C.,
DEAR SIR, 16th November 1910.

I AM very sorry to trouble you with reference to another resolution passed by my council. I should have forwarded this with the one I sent you on the 10th inst.

I am, yours faithfully,
W. P. MARA.

"That the Westminster Catholic Federation protest against the publication in the press of the detailed evidence in applications for divorce as constituting a grave danger to morals and submit that only the names of the parties concerned and the result of the application be published."

(22.)

The Vicarage, Willaston,
DEAR SIR, Near Chester, 12th May 1910.

I BEG leave to enclose you a copy of a resolution passed at the last meeting of the Wirral Ruri-decanal Conference composed of clergy and laity.

Kindly acknowledge safe receipt of same and oblige

Yours very truly,
WALSHAM POSTANCE,
Hon. Secretary.

To the Secretary,
Royal Commission on Law of Divorce.

Copy of resolution passed at the Spring Conference of the Wirral Rural Deanery (with one dissentient), held at Rock Ferry, Cheshire, on Wednesday, 11th May 1910, under the presidency of the Rev. T. H. May, Rural Dean.

"That this conference expresses its most earnest hope that the Royal Commission on the Law of Divorce, now sitting, will not make any recommendations which involve any increase of facilities for dissolving the marriage tie: and further believes that it would be for the best interests of the nation that the Divorce Act of 1857 should be repealed."

(23.)

Lambeth Palace, S.E.,
DEAR SIR, 23rd June 1910.

I AM asked, as the president of this Committee, to forward to you the enclosed resolution, and to ask you to be so kind as to take the necessary steps for presenting it to the Royal Commission on Divorce and Matrimonial Causes.

Believe me to be,
Yours sincerely,
EDITH M. DAVIDSON.

H. Gorell Barnes, Esq.

"The Central Committee of Women Church Workers, consisting of representatives of Churchwomen from Dioceses in every part of the world, desire to express to the members of the Royal Commission the earnest hope that there may be no increase either of the courts which have jurisdiction in divorce proceedings, or of the grounds upon which divorce may be legally obtained, as they believe that any such increase would weaken the sense of the sanctity of marriage in the minds of the people, and the strength and stability of family life."

Signed on behalf of the Committee,
EDITH M. DAVIDSON, President.
LOUISE CREIGHTON, Chairman.
MAUD MONTGOMERY, Hon. Secretary.

June 23, 1910.

(24.)

WORCESTER DIOCESAN CONFERENCE.

Avonbank, Stratford-on-Avon,
DEAR SIR, 17th June 1910.

I AM directed by the Lord Bishop and the diocesan conference to forward to you the enclosed resolutions which were adopted *nem. con.* by the conference at their session on Wednesday, June 15th last.

I am, yours faithfully,
(Signed) WILLIAM G. MELVILLE,
Hon. Clerical Secretary.

WORCESTER DIOCESAN CONFERENCE.

"(1) This conference maintains that the Matrimonial Causes Act, 1857 (commonly called the Divorce Act) has had a harmful effect on the morals of the nation, particularly in unsettling family life and in doing harm to children. Its opinion that further facilities for divorce would increase existing evils is strengthened by its observation of the case of other countries; and it prays His Majesty's Government to propose no further enactment which will cause divorce to be more frequent.

"(2) It further prays His Majesty's Government to restrict by law the publication of details of cases in the divorce court by the public press."

D.

FORM of LETTER and RESOLUTION of the NATIONAL BRITISH WOMEN'S TEMPERANCE ASSOCIATION.

MY LORD, 11th June 1910.

WE beg leave to approach your Lordship as Chairman of the Royal Commission on Divorce on a matter vitally concerning the moral and legal status of women in respect of divorce. They do not desire that divorce should be made easier or that facilities for divorce should be extended, or that a merely superficial sex-equality should be brought about by lowering the moral standard on one side or the other; but they desire to register a respectful protest against the grounds upon which the present inequality in respect of misconduct has been defended in the evidence given before the Commission by certain witnesses.

It is alleged broadly that moral temptations press more heavily upon men in general than upon women; that failure on the part of the man is more or less accidental; that whereas misconduct on the part of a wife would be inconsistent with continued love for her husband, it is not so on the part of a husband; that the injury inflicted by the wife's offence is greater than that inflicted by the husband's; and that the keeping of a separate establishment by a man would not be inconsistent with the proper respect and affection due to his wife.

With regard to these opinions we venture to submit:

(i) That throughout the whole of the literature touching upon the significance of marriage, and upon the social and moral and religious import of the relations between men and women, no sanction will be found for the views herein expressed. On the contrary the picture constantly drawn is not merely that of fidelity after marriage, but of fidelity to the future wife before marriage. We venture to think that the appeal to the literature of the question should carry considerable weight as to the best opinion on the subject, and cannot in wisdom be set aside.

(ii) That an attempt to estimate the injury inflicted by the misconduct of either of the parties upon the other misses the vital point of the moral and social problem involved; namely, the well-being of family and child life, as conditioned by the moral and physical health of parents. Monogamic marriage as a legal institution appears to rest upon consideration for the nurture and protection of the offspring. Only within its pale is parentage legitimate; and all the institutions of society rest on the integrity of the family unit and the purity of the family life. Immoral conduct on the part of either parent is not merely an injury to the other party in the solemn contract thus violated, it is in spirit, and often in point of fact, a grievous injury to the offspring, and to the whole fabric of social life.

If it were within the scope of your Lordship's Commission to take cognizance of the serious national import of that form of unwillingness to beget children which has been termed "race suicide," of the large percentage of divorce suits associated with childless marriages, and of the effects of venereal disease in producing sterility, immaturity, congenital malformations, infantile disease, and its bearings on the serious problem of infantile mortality, the question of the injury inflicted by misconduct would transcend all distinctions of man or woman, and might perhaps even throw the greater burden of blame on the man, since his misconduct may result in the communication of venereal disease not only to his wife—a very serious injury—but also to the innocent and helpless offspring in whom the health of the next generation of the community dwells.

(iii) Whether, and how far, misconduct on the part of a man may be regarded as accidental, may perhaps be considered in the light of the question as to with whom such "accidental" misconduct is likely to take place. Misconduct with a pure woman would imply a very deliberate and sedulously pursued intention; with an immoral one, a choice of company, which in itself, even before the commission of the act, could not be held consistent with due regard for the rights of wife, or family, or of society. Along the path of dalliance "accidents" belong to the category of high probabilities.

(iv) As to whether the maintenance of a separate establishment by a man would be consistent with the affection due to his wife. An offer of marriage carrying with it provision for such a condition would, by the overwhelming majority of women, be rejected with scorn, and we suspect that there would be few men who would be cynical or depraved enough to make the suggestion.

For these and other similar reasons we desire heartily to endorse the weighty opinion expressed by many eminent witnesses before your Lordship's Commission in favour of making the legal no less than the moral significance of misconduct similar for both the sexes. Nothing could more happily strike the general sentiment among the average population than the testimony of Sir John Bigham that "Juries were "influenced by all sorts of conditions which, in the "opinion of a lawyer, should not influence them at all. "*They were always in favour of the lady.*" ("Daily News," 1st March 1910.) General sentiment appears to assess the injury with a fair amount of rough and native justice.

We are,
Your Lordship's humble Servants,

To the Right Hon. Lord Gorell.

(1) LIST of BRANCHES of the said ASSOCIATION submitting the above.

Abergavenny.
Alford (Lincs.).
Barrow-in-Furness.
Batley.
Bedford.
Bishop Auckland.
Bootle.
Bradford.
Bridport.
Carlisle.
Chesterfield.
Dewsbury.
East London Union.
Exmouth.
Halton and Crossgates.
Harrogate.
Harrow.
Havant.
Hexham.
Howden-le-Wear.
Keighley.
Lincoln.
Liverpool Centre.
Liverpool, Women's Life Society.
Middlewich (Cheshire).
New Barnet.
Newport.
Old Barrow.
Oxford.
Parkstone.
Penarth.
Peterborough.
Redhill.
Romford.
Salisbury.
Southampton.
Southend-on-Sea.
South Shields.
Staffordshire County Union.
Stoke Newington.
Tunbridge Wells.
Tyne Dock.
Wallasey.
Wellingborough (Northants).
Wellington (Salop).
West Hartlepool.
West Hull.

(2) LIST of BRANCHES of the said ASSOCIATION submitting LETTERS and RESOLUTIONS substantially similar to the above.

Beeston Hill (Leeds).
Birkdale.
Birmingham, Warwick and District Union.
Blackheath.
Burslem.
East Dulwich.
Grantham.
Hither Green.
Kingston-on-Thames.
London (Central).
New Street and Rosemary (Bristol).
North Finchley.
North Wales.
Plumstead.
Pontypridd.
Rock Ferry.
Shrewsbury.
Sidcup.
South Metropolitan Union.
Southport.
Stoke Newington.
Stourbridge.
Stratford and West Ham.
Sutton Coldfield and Erdington, Four Oaks and Hill.
Wallasey.
Waterloo and Blundellsands.
Waverley Park.

E.

RESOLUTIONS FROM ASSOCIATIONS, &c.

ASSOCIATIONS from which RESOLUTIONS have been received.

(1) Birkenhead and District Women's Guild.
(2) Birkenhead and District Women's Suffrage Society.
(3) Birkenhead Women's Adult School.
(4) Birkenhead Women's Local Government Association.
(5) British Temperance League.
(6) Coventry and District Women's Liberal Association.
(7) Glasgow City Branch of the Independent Labour Party.
(8) Liscard Branch of the Women's Labour League.
(9) Liverpool Branch of National Union of Women Workers.
(10) Liverpool Union of Women Workers.
(11) Manchester, Salford, and District Branch of National Union of Women Workers.
(12) National Council of P.S.A.'s Brotherhoods and Kindred Societies (Women's Committee), Peterborough.
(13) National Women's Labour League—Durham and Northumberland Branches.
(14) Pontypridd and District Women's Liberal Association.
(15) Seacombe Branch of Independent Labour Party.
(16) Wallasey and Wirral Women's Suffrage Society.
(17) Wallasey Socialist Society.
(18) Women's Cottage Guild, Liscard, Cheshire.
(19) Women's Industrial Council.
(20) Women's Liberal Federation.

(1.)

BIRKENHEAD AND DISTRICT WOMEN'S GUILD.

122, Woodchurch Lane, Birkenhead,
28th May 1910.

SIR,

WILL you kindly place before the Royal Commission on Divorce the following resolution, which was passed unanimously at the above guild meeting held in the Co-operative Hall, Catherine Street:—

"That this branch of the Birkenhead Women's Guild strongly urges that the divorce laws shall be made equal for women and men, as they have been for centuries in Scotland."

Thanking you for the same,

Yours sincerely,
(Mrs.) M. RUSSELL,
Hon. Secretary.

(2.)

BIRKENHEAD AND DISTRICT WOMEN'S SUFFRAGE SOCIETY.

4, Mather Road, Oxton, Birkenhead,
31st May 1910.

SIR,

I BEG respectfully to draw your attention to the following resolution, which was passed by the committee of the above-named Society in the hope that it would be placed before Lord Gorell:—

"That this branch of the National Union of Women's Suffrage Societies urges that the divorce laws shall be made equal for women and men, as they have been for centuries in Scotland."

Yours obediently,
(Miss) A. WYSE,
Hon. Sec.

To the Secretary,
Divorce Commission.

(3.)

MY LORD,

Birkenhead, 25th May 1910.

THE Women's Adult School, Oxton Road, Birkenhead, desires very strongly to emphasise the main points of the letter addressed to your Lordship by the Women's Life Society, Liverpool, where it is urged that the legal, no less than the moral, significance of misconduct should be made similar for both sexes.

The present inequality in the divorce law is morally indefensible.

We are,
Your Lordship's humble servants,
EDITH J. WILSON, President.
CECILE A. FLEMING, Vice-President.

Lord Gorell.

(4.)

BIRKENHEAD WOMEN'S LOCAL GOVERNMENT ASSOCIATION.

DEAR SIR,

30th May 1910.

I AM instructed by my committee to forward to you the following resolution passed at a meeting of the committee of the Birkenhead Women's Local Government Association held to-day.

I am, yours faithfully,
LUCY E. ABRAHAM,
Hon. Sec.

Resolved:—

"That this committee of the Birkenhead Women's Local Government Association strongly urges upon the members of the Divorce Commission the desirability of recommending, in their report, that the divorce laws of this country shall be made absolutely equal for both sexes, as they have been for centuries in Scotland."

(5.)

THE BRITISH TEMPERANCE LEAGUE.

29, Union Street, Sheffield,
19th July 1910.

DEAR SIR,

AT the 77th annual conference of this League, held in Caxton Hall, Westminster, the following resolution on the divorce question was passed unanimously, and we are forwarding you a copy by the direction of the conference:—

"In view of the emphatic testimony of witnesses before the Royal Commission on Divorce and Matrimonial Causes, that addiction to the enslaving drug alcohol is more potent in promoting impurity in thought and conduct (thus leading to the sundering of the marriage tie, and the breaking up of the home) than all other causes put together, this conference appeals to the statesmen of all parties, and to the leaders of the Christian Church, for personal example against the use of the intoxicating drug, and for associated action against its sale and distribution: thus solving the anxious problem now before the Divorce Commission in the best of all fashions—the removal of the evil causation."

We are also enclosing a copy of the "British Temperance Advocate" for June, and beg to solicit the favour of a careful perusal of the article, "Three Voices on the Divorce Question." The example of personal abstinence from the intoxicating drug, in the home and in public life, on the part of all Christian and patriotic people, would purify and protect family life from this great evil, and the conference respectfully invites all such to adopt that course.

We are, yours very faithfully,
EDWIN RICHMOND, Hon. Secretary.
CHARLES SMITH, Secretary.

H. Gorell Barnes, Esq.

(6.)

COVENTRY AND DISTRICT WOMEN'S LIBERAL ASSOCIATION.

13, Grosvenor Road, Coventry,
DEAR SIR, 5th April 1911.

AT a meeting of the committee of the above association on Monday evening, April 4th, it was unanimously resolved that the annexed resolution which was then passed should be sent up to you.

Yours truly,
M. A. STREETLY,
Secretary to the Secretary.
Divorce Commission, London.

Resolution:—

"That this meeting (representing upwards of 900 women of Coventry and district) considers that the divorce laws should be so amended as to place the sexes in a position of perfect equality in all respects, and is also of opinion that if possible there should be a cheapening of procedure so as to be of assistance to really necessitous cases, but that great care should be taken in any proposed amendment of the law, not to make divorce so easy for any class of people as to encourage the tendency to make marriage a civil contract, dissoluble at the will of the parties."

(7.)

INDEPENDENT LABOUR PARTY
(GLASGOW CITY BRANCH).

126, Bothwell Street, Glasgow,
DEAR SIR, 4th April 1910.

I BEG to advise you that at a meeting of this branch held here on Sunday the enclosed resolution was passed.

Yours truly,
JAMES MCKINLEY,
The Secretary, Secretary.
Royal Commission on Divorce,
London.

Resolution:—

"That this branch of the I.L.P. regret the necessity of writing the Royal Commission on Divorce, and wish to state our disapproval of the statement made by one of the witnesses that the marriage tie is held lightly by the poor. We emphatically deny that the marriage tie is held lightly by this class, and as such a statement made regarding the most tender relationship between working men and women is misleading and a libel on the working classes, as there is no other reason for marrying than love and respect, for neither party to such a contract has anything to gain, we are shocked that a single man holding a Government appointment should be found willing to make such a statement. We also desire to protest against the opinions expressed giving preference to one sex with regard to infidelity, and claim an equality for the sexes in dealing with cases for divorce on these grounds."

(8.)

21, Mount Road, New Brighton,
SIR, near Liverpool, 10th June 1910.

I MUCH regret that two resolutions passed by this branch of the Women's Labour League were put into wrong envelopes. The enclosed should have been sent to you.

With apologies,
Yours truly,
LEONORA STALLYBRASS.

"That this meeting of the Liscard branch of the Women's Labour League earnestly desires that there should be equality of reasons for divorce for both sexes."

And further,

"That divorce should be placed within the reach of the poor."

(9.)

Ashfield, Knotty Ash,
MY LORD, Liverpool, 17th June 1910.

AT a meeting of the council of the Liverpool Branch, National Union of Women Workers, specially called this month to consider the present position of women under the divorce laws, the following resolution was unanimously passed, and I was instructed to forward it to your Lordship:—

"That this council most earnestly protests against the present inequality of the divorce laws, and prays for its equalisation between the sexes."

I am, my Lord,
Yours faithfully,
EDITH BRIGHT
(Mrs. Allan H. Bright),
Hon. Sec., Liverpool Branch
National Union of Women Workers.

To the Right Hon. Lord Gorell.

(10.)

15, Rutland Avenue, Sutton Park,
Liverpool, S., 29th June 1910.

MRS. SHILSTON WATKINS begs leave to forward an account of a meeting held under the auspices of the Liverpool Union of Women Workers, on Monday, the 27th instant, when the Rev. John Wakeford advocated the repeal of the divorce laws, and an amendment that the laws be *not* repealed, but amended and made equal between men and women, rich and poor, was carried by 73 votes to 17.

The mover and seconder of the amendment did not press for its being put as a substantive motion, and forwarded to the President of the Divorce Commission in view of the fact that the Honorary Secretary of the Union and some of the other officials supported the resolution moved by the Rev. J. Wakeford.

(11.)

65, Barton Arcade, Manchester,
DEAR MADAM, 5th May 1910.

AT the request of the London Legislation Sectional Committee of the National Union of Women Workers, a joint meeting was held of the Executive and Legislation Committees of the Manchester, Salford and District Branch of the National Union of Women Workers, at which the enclosed suggestions for evidence before the Royal Commission on Divorce were offered, which I am asked to lay before you.

These resolutions were all unanimously passed with the exception of No. 4, which was carried *nem. con.*

I am, dear Madam,
Yours faithfully,
EDITH MOORHOUSE,
To Lady Frances Balfour. Secretary.

Resolutions:

"1. Equal rights for men and women.

"2. The payment of maintenance money through a recognised officer of the court.

"3. Avoidance of publication of undesirable details in the daily press.

"4. That so long as divorce remains the law of the land, it should be as possible for the poor as for the rich.

"5. Separation orders should be granted only after a time of probation, and that experienced men and women should be appointed to investigate into the circumstances; further that the cases should be heard by a special sitting of magistrates."

(12.)

23, Belmont Drive, Newsham Park,
Liverpool, 14th June 1910.

My Lord,

I have the honour to place before you and the members of the Commission, the enclosed resolution which was passed with enthusiastic unanimity at the June meeting of the executive of the National Council held in Peterborough on Saturday, the 11th instant.

I have, &c.,
Maggie G. Forson, Hon. Sec.,
Women's National Committee.

To the Right Hon. Lord Gorell,
President of the Divorce Commission.

Resolution:

"That this executive of the National Council of P.S.A.'s, Brotherhoods, and Kindred Societies, regards with serious apprehension the views expressed at the Divorce Commission by Mr. Justice Bigham (Lord Mersey) and others relating to the difference in the standard of morality between the sexes.

"It expresses its indignation at the doctrine of 'accidental misconduct,' and demands the same standard for men as for women."

Maggie G. Forson.

(13.)

15, Oakfield Terrace, Gosforth,
Northumberland,
15th September 1910.

Sir,

I am directed to forward to you the enclosed resolution which was passed at a conference of delegates from the N.E. branches of the National Women's Labour League, held at Sunderland on September 10th, 1910.

I am, sir,
Yours respectfully,
(Mrs.) L. E. Simm,
Org. Sec.

H. Gorell Barnes, Esq., Sec.,
Royal Commission on Divorce.

At Sunderland, Sept. 10th, 1910.

Resolved:

"That this conference of the Durham and Northumberland branches of the National Women's Labour League, after having heard an address on the divorce laws of this and other countries, is of opinion that divorce should be granted for—

"Adultery, wilful desertion for two years or more, incurable insanity, habitual drunkenness, continued cruelty or murderous assault, condemnation to penal servitude, judicial or voluntary separation for two years or more, and mutual consent or incompatibility of temperament.

"We are also of opinion that women should be admitted as assessors to act along with the judge, and that women should sit on all juries in divorce cases, but,

"We especially urge that whatever change, if any, be made in the law, it shall be in the direction of putting men and women on an absolute equality."

(14.)

Tophill, Pontypridd (Glam.),
8th July 1910.

Dear Sir,

I have the honour to forward you the accompanying resolution from the Pontypridd and District Women's Liberal Association, and to request that you will lay it before the Commission:—

"That this meeting of the Pontypridd and District Women's Liberal Association, representing 80 members, protests with indignation against the statements made by Mr. Justice Bigham and others in their evidence before the Royal Commission on Divorce that a different standard of morality should govern the actions of men and women."

Yours faithfully,
Sadie E. Lewis,
Hon. Sec.

H. Gorell Barnes, Esq.

(15.)

37, St. Paul's Rd., Seacombe,
nr. Liverpool,
20th June 1910.

Your Lordship,

The following resolution was carried unanimously at a meeting of the Seacombe Branch of the I.L.P. on the evening of June 18th, and I was requested to send it up to you.

Yours obediently,
C. F. Rymer,
Hon. Sec. Seacombe I.L.P.

"That there should be equality of reasons for divorce as between men and women."

And also—

"That divorce should be placed within the reach of the poor."

(16.)

Wallasey and Wirral Women's Suffrage Society.

16, Newland Drive, Liscard, Cheshire,
20th May 1910.

Sir,

I am instructed by the committee of the above Society to forward to you the enclosed resolution which was passed unanimously.

Yours faithfully,
Eleanor F. McPherson.

The Secretary of the
Royal Commission on Divorce.

To the Royal Commission on Divorce,
sitting at Westminster.

Resolution:

"That in the opinion of the committee of the Wallasey and Wirral Women's Suffrage Society (representing over 250 women) the grounds for divorce should be made equal for men and women.

"That the possibility of divorce should be brought within the reach of the poor."

(17.)

Wallasey Socialist Society.

Fairhaven Institute, Seaview Road,
Liscard, Cheshire,
22nd June 1910.

Gentlemen,

At the last meeting of the above Society the following resolution was proposed and carried unanimously:—

"That this Society regards the present law of divorce as unjust to women, and considers that no alteration of the law will be satisfactory or just which does not establish the equality of both sexes in all matters concerned with the law of divorce.

Yours faithfully,
A. Weare.

To the Royal Commission on the
Law of Divorce, London.

(18.)

Breck Hey, Liscard, Cheshire,
15th June 1909.

AT a meeting of a Women's Cottage Guild, with 125 women present, it was unanimously resolved —

"That in the opinion of this meeting, held at Breck Hey, Liscard, Cheshire, the laws of divorce should be made equal between the husband and the wife."

To the President of the
Divorce Commission, now sitting.

(19.)

7, John Street, Adelphi,
SIR, Strand, W.C., 11th July 1911.

AT the statutory business meeting of the Women's Industrial Council (Incorporated) held on Monday, June 19th, the accompanying resolution was unanimously adopted, and I was instructed to forward it for your kind consideration.

I am,
Yours faithfully,
L. WYATT PAPWORTH,
Secretary and Treasurer.

To H. Gorell Barnes, Esq.,
Royal Commission on Divorce
and Matrimonial Causes.

3. "That in view of the present unsatisfactory results of maintenance grants under separation orders, the Women's Industrial Council urges upon the attention of H.M. Government:

"(*a*) That in the case of a separation order, which necessarily implies bad behaviour on the part of the husband (or wife), the couple should not be obliged to come in personal contact or to communicate by means of the children for the payment of the maintenance. It should be payable into court or through some official, at the option of the parties concerned.

"(*b*) That the wife should not be at the expense of summoning the husband for making default in payment. A way should be arranged by which, without a large amount of trouble, she should be able to get her summons free.

"(*c*) That it should be made optional for the wife to put upon the court the responsibility for summoning the husband when the maintenance payable by him is in arrear, and for tracing him if he leaves the neighbourhood. The machinery appointed to carry out (*a*) would naturally also be utilised for this purpose of enforcing payment, particularly when there are children.

"(*d*) That orders for the wife's maintenance might be served on the husband's employer for the payment direct to the wife of the maintenance out of the man's wages (if so ordered by the court)."

(20.)

WOMEN'S LIBERAL FEDERATION.

72, Victoria Street, Westminster, S.W.,
DEAR SIR, 20th June 1910.

I AM instructed by the Executive Committee to send you the following resolution, which was unanimously carried by delegates of Women's Liberal Associations affiliated to the Women's Liberal Federation (representing approximately 95,000 women) assembled in council on June 15th, 1910:—

"This council approves the Marriage Law Amendment Bill now before Parliament, which provides that the law of divorce shall be amended so as to entitle either party to a divorce on the grounds of unfaithfulness alone."

With further reference to this resolution, my committee ask that they may be permitted to send a representative to lay their views before the Divorce Commissioners.

Yours faithfully,
IRENE MCARTHUR,
Secretary.

Lord Gorell.

APPENDIX XXVI.

The following are copies of some of the large number of letters received by the Commissioners as stated in the Report. Of those received a large proportion deal with individual cases. It has not been thought necessary to copy all of them, but sufficient have been copied to afford means of arriving at an appreciation of the grievances complained of, or some of them. Most of the letters dealing with particular cases, including all those copied, gave the names and addresses of the writers and of persons and places referred to by them, but for obvious reasons these are omitted in the copies.

The copies do not include any of the anonymous letters, of which many were received, nor of argumentative letters, nor of letters which did not seem of sufficient importance or were of excessive length, nor of letters marked private or not for publication.

MY LORD,

WITH reference to divorce for the poor in which I have seen from time to time that you are interested, may I cite my own case as one which can claim sympathy? Ten and a half years since my wife deserted me without cause, and all attempts to find her have failed. The law will not allow me to marry for I know my wife is alive.

An application for restitution of conjugal rights would be expensive and would do no good and a judicial separation would probably do more harm than good.

I lead a lonely and loveless life, and while obeying my country's laws my country in this respect does not help me. It is, I consider, a gross injustice. I could, if necessary, give you a dozen references as to my good standing and respectability, for instance, . . . has known me for thirty six years.

I am, my Lord,
Respectfully yours,

To His Honour the Ex-President of the Divorce Court.

MY LORD,

I HAVE read with great interest your appeal for cheaper divorce and I should like to state my case to you.

Nearly 15 years ago my husband went to South Africa and left me with 4 young children, for the first 3 years he sent regular but since that time I have had no money or letters from him and I have had to work very hard to bring up my family and could not have done it if my parents and his had not helped me, my youngest child is nearly 15 and I am only 41 but I must not marry because I cannot afford to get a divorce. I have thought sometimes he must be dead but could not quite realise it was so, about 12 months ago I had an offer of marriage and was almost tempted to think he was dead but could not make up my mind to get married without waiting a little longer for fear he might return, about 3 months ago his parents received a letter from someone in Africa asking for help for him as he was ill, a friend of ours was going to . . . and made inquiries at . . . where he is residing and found out he had not been ill and the woman in whose house he is living wrote the letter, and I am bound to a villain like that in this country, but if I was in

America I could have got a divorce for desertion long ago for quite a small sum. I know many more similar cases around here. I might say it was nothing in my character that induced him to stop sending. Now my Lord I should like to ask you if you would be so kind as to tell me if I could get a divorce for desertion as I could not afford to get evidence of adultery and shall not be able to get the divorce without the fee is very much lower than it is now.

I have the honour to be my Lord,
Your most obedient servant,

SIR,

I WOULD be extremely obliged if you would kindly advise me the cheapest way of obtaining freedom from my husband . . . an English subject. I was married to him at the register office . . . I was quite happy with him up until about 1904 when he began to give away drinking to the excess, gambling, and got into difficulties in money matters, as the result that he lost his situation as a butler. He went to America promising of reforming himself and would have sent for me and our child, as soon as he would have found a situation. At first I hear from him once, then elapsed about 8 months without a single line in answer to my letters. Not knowing what became of him I wrote to the British Consulate at . . . who has found my husband in a good situation but soon lost it through his master having found out that he had a woman frequently coming in the house after him, and made her pass as Mrs. [writer's name]. In the meantime I have heard then from my husband excusing himself but with quite a different tale of the fact. Since then I have heard nothing more from him. I again enquired through the Consulate, but could not be traced. On the whole it is over five years since I had a penny from him towards mine and our child's keep. I may add that soon after he left England I heard that he had carried on with another married woman, whose husband acknowledged the fact to me by letter which I still possess. I beg to apologise Sir for troubling you. Please accept my sincere thanks in advance,

Yours respectfully,

Hon. H. Gorell Barnes,
Secretary, Royal Commission on Divorce.

SIR,

I TAKE the liberty of putting my case before you. I was married on . . 1878 and at that time was . . . My wife shortly after took to drinking, pawned everything she could lay hands on, even the bedding, and my clothes, she committed theft in the . . . and was associating with men. I was nearly driven mad by her conduct. Could have got plenty of evidence of misconduct, but owing to the want of money could not apply for divorce. In . . . 1881 she left me taking with her my son another child was born at . . . in . . . She then went to London and in order that the children might not want I allowed her 15*s*. a week. On visiting them at . . . I found her and the children sleeping in an empty house. She also committed theft here. Very shortly after this she deserted the two children having left them with her brother at . . . I then claimed the children and brought them up, my son served his time to be an engineer, and my daughter is now married. I have not heard from or seen my wife since the middle of 1883, over 26 years. About 4 years ago I heard she was in an institution and some 3 months ago got her address she having left it. I am now financially in a position to apply for a divorce but her associates are dead, and others left here. I am afraid I shall have some difficulty in proving adultery.

I am at present the . . . and have been in the employment of that corporation for over 31 years. I feel very much grieved at my position and think that it is a great hardship that after such shameful conduct and desertion of over 28 years I should still be tied to such a woman who also ruined my prospects at that time.

Trusting these particulars may be of some service to you,

I remain Hon. Sir,
Yours truly,

SIR OR GENTLEMEN,

I BEG to ask the favour of laying my case before you and to ask, if you think there is any hope for me. it is this in 1904 . . . I was married at . . . Church . . . on the 3rd day He began to beat and abuse me and continued it many times broke up a nice home which my Mother and I provided as He did not and Burnt my clothes etc. and ilused me. I ran away and at 10 weeks was granted a Seperation by . . . Magistrate at . . . After that I found I should be having a Child which was born . . . 1905. So my Mother thought it would be better and I returned and lived with Him again and he behaved so bad to me after 5 weeks after baby was born I Had to leave Him and I applied for another separation at . . . and it was granted . . . 1905 by . . . and an allowance of 10*s*. per week. But He is gone and I do not know anything of Him over 3 years and all my married life is 17 weeks in 5 years 3 months. I am a machinist at dressmaking and support myself and my little boy and live with my widowed Mother.

Can you help me—and is there any hope for me to get a divorce.

I beg you will pardon this liberty.

I am, Sir,
Your humble Servant,

To Hon. Henry Gorrell Barnes,

SIR,

I AM pleased to hear of the Royal Commission on Divorce. In my case my wife left me and would not return to me although I begged her to do so, this was . . . 1907 nearly three years ago. We had a deed of Separation. Now I wish to get a decree as I wish to get married again, under any circumstances I should never return to her and I am living with a lady whom I want to marry. I do hope the law will soon be altered so that it will release me so that I can be properly married again.

Yours most respectfully,

To the Rt. Honourable
H. G. Barnes.

SIR,

MAY I be permitted to draw your attention to that of the deserted wife I have a friend whose husband deserted her four years ago. She has had to part from all her children the two eldest have been adopted the youngest she still supports and she herself has had to seek a situation, so her life is very hard and lonely. She could have married if the law would have permitted her to do so. Meanwhile the husband relieved of all responsibility is no doubt enjoying life at its fullest.

I should esteem it a favour if you would kindly use your influence on behalf of the deserted wives.

Your obedient servant,

DEAR SIR,

IM glad your taking a leading part in trying to get Divorce for the working classes as I for one have been 9 years deserted by my wife and cannot marry again as Im held up and how can we be a Loyal Christian until we get a remedy. according to our humble situation in life. So let us have some good news for the New Year. wishing you many of them.

Yours Respfully,

DEAR SIR,

I AM writing to you to ask if you would kindly inform me how much it would cost me to get free from my wife who deserted me 2 years & 4 months ago and left me two young children she has gone to America and she has been out there 26 months and a friend of mine says that she can marry out there after 2 years and I should not be able to touch her as regards bigamy. I have proof that she has committed adultery on more than one occasion and I have letters which she has sent me which is quite good enough for anybody to judg her by I want to get free because I have fear she might come over here and take one of the children away while I am at work. I am only a working man earning on an average 30*s*. per week so I could not afford a large sum. I was informed to write you for particulars of how much it would cost me. Should you require

further information I should be very pleased to give it you respecting the above. An early answer will oblige.

I remain,
Yours,

My Lord,

I am very glad indeed to see that the Royal Commission on Divorce is to meet under your esteemed Presidency to-day. May I venture to express the hope that it may be possible for the Commission to suggest *permanent desertion* as a sufficient ground ipso facto, for divorce. I am Curate-in-Charge of this large Parish, but cannot get a licence from my bishop on the ground that I am not living with my wife when it is she who has deserted and wrecked my home after misconduct with a man. I cannot get a divorce it being too expensive, and also the shame. The position is both anomalous and undefensible. I am of sufficient credit to have charge of a large parish, but cannot hope for preferment on account of my wife. In the colonies of Australasia I should have been emancipated years ago. It is now . . . years since I have been in this case. Therefore I do hope for relief from the Commission.

Pray pardon the liberty I am taking in making this suggestion.

I have the honour to be, my Lord,
Yours v. faithfully,

Dear Lady Balfour,

Seeing in to-day's paper that you are one of the Commission on Divorce laws I shall take the liberty of writing you and ask if anything could be done for me. My husband deserted me 4 years ago and resides in Mexico. He is I know living with a woman out there as man and wife. He never sends me a penny neither does he keep his children. *I am* letting apartments at the above address and by a little help from friends manage to live. I cannot get my divorce simply because it is far more than I can ever save out of my earnings. The solicitors require 25*l.* down and say my case the very least would cost 75*l.* I can therefore never hope to be free unless the laws are altered as it is far beyond my means and yet I do not come under the "pauper" law having a bisiness, although all my furniture is hire and I have not any money of my own except what I earn. Can you possibly help the really poor yet decent woman who could pay a little to get her case, but not the fearful and impossible sum that is required now. There must be many who would be most glad if divorce could be made possible to the middle class.

Thanking you in hopes,
Yours faithfully,

The Hon. H. Gorell Barnes,

Dear Sir,

It is with the utmost interest I have read the reports so far made public in connection with the Royal Com. on Divorce. Like many other women I'm placed in a very difficult position; wishing and feeling to have every right to claim a divorce yet not sufficient evidence as the law now stands. Four years this coming July I was married in . . . The following *four months* were a period of untold misery and mental anguish. At the end of that time my husband deliberately left me, and since . . . 1906, not a trace of his whereabouts has been found or a word has broken the silence. Every effort was made to this end by public and private means but all with the one result.

In any case my whole moral instinct *revolts* at the idea of a reunion; neither would he wish it I am assured, if he were found. But as there was no actual cruelty so far as blows, though he came very near it in his extremely passionate moods; I have always felt that the fact of desertion is not enough in the eyes of the law for me to attempt to gain a divorce upon.

My sympathies are entirely with you in this matter. Not that the ideal of honour or marriage should be lessened; but that divorce should be obtainable on wider grounds than at present, to, in many cases, save the moral character of the individual.

Yours very truly,

Lady Frances Balfour,

My Lady,

I have been very much interested lately in reading that a Royal Commission for Divorce has been formed and as I notice you are sitting on this Commission I take the liberty of bringing my case before your notice.

It is five years since my husband went away without a word of explanation and since then I have had to support myself to the best of my ability, as he has never helped me in any way, in fact I am in ignorance as to his movements.

Shortly after my marriage he recognised that I had a small income and played on my feelings to such an extent that in a very short time he had morgaged the whole of it. After this I humbled myself, I went into a business with him and did my utmost to encourage him to keep straight but my efforts were in vain, for he seemed to prefer the company of loose companions rather than a comfortable home and cheerful wife. He then became a working partner in a . . . business but soon committed himself and was obliged to leave . . . which as I have already stated is five years ago.

You will readily understand what a hard life I have had for 12 years, simply because I have not had the means to seek release in the ordinary divorce court. I do sincerely trust that the good work you are engaged in will prove a great success for the sake of poor suffering innocent women. Apologising for troubling you and thanking you in anticipation for any suggestion you may be kind enough to send me.

I am,
Yours faithfully,

To Lord Gorell,
Chairman of the Royal Commission.

I hope your Lordship will excuse this liberty I am taking in laying before your Lordship my grievance regarding this matter in which is now taking up your valuable time.

I have been married 9 years and had led a very happy life untill I came home one afternoon in . . . 1908 unexpected and found my wife in bed with the lodger, who I had always treated as a brother, having taken him in, when he was in want and starving, and for 6 years he had lodge with me and had been treated as a friend of the family, however I turned the man out of the house and reasoned with my wife, finding she was the worse for drink, and telling me it was the first time such a thing had occurred. I believed her and forgave her on the promise of her never speaking to him again. I forgave her so much that 3 days after I handed 75*l.* Seventy five pounds over to her, which I had just received in settlement for a claim for compensation to let her see I had still faith in her, and trusting her in every way I know Your Lordship will say what a silly thing to do.

A few weeks after I came home to find my home, wife and child gone, she had taken rooms and was with this scamp for he is no man, I must tell Your Lordship my wife is 22 years older than him.

I applied for a warrant for her arrest at . . . Police Court in the meantime my wife finding that I intended to charge her, applied for a summons against me for threats, but I had only threatened the man with a good hiding, however both cases was to be heard the same day before Mr. . . . taking my wife case against me first my wife and another woman swore that I threatened her with a razor and that I kicked her, which was false, as my razors were taken and also my clothes with the rest of my home, Mr. . . . did not so much as ask me a question but bound me over to keep the peace for 12 months, which I kept faithfully and went out of . . . but when I returned I met the woman who had appeared against me, she apologised to me and said it was all false what she had said against me, and also told me if ever she could put right the wrong she had done she would. when Mr. . . . saw what a different face my case made I think he saw where the wrong was and what my wife was trying for, so he told me he was sorry for me and that my wife could not get an allowance made against me.

I did not meet my wife and did not know where she was untill one Sunday night I met her and this man together, I politely ask her how my child was (a little girl now 4 years of age) but she struck me in the eye with a bag she was carrying (I have never struck a woman yet) but I turned on the man and gave him a good hiding which he well deserved such a hiding that he was laid up in bed for days and only used my fists on him after I had given him as much as I think he deserved I let him go and told him he would have the same each time I met him with my wife, I have only met him once since when he received the same, so he keeps out of my way. This last few days my wife's sister has shown me letters which was written by my wife to this man one is where she sent him 3*l.* to pay back money which he had used of his masters. So I hope your Lordship will see how necessary it is for a change in the English Divorce laws for the poor. I am only a butler so after losing all I had in the world I must be content to be tied to a woman like that all my life, it is more the thoughts of my poor little Girl to be brought up in such a life, and I who has done no wrong not to be allowed to see my child and not so much as to know even where she is.

Now once again I must apologise for encroaching on your valuable time trusting a day may come when we shall see an alteration in these Laws.

Thanking you for perusal of this letter.

I beg to remain Yours respectfully,

My Lord,

Kindly forgive me for writing to you but I am reading carefully the matter on Divorce law now before the Royal Commission. No question has yet been put relating to a case similar to my own.

Up to 2 years ago I lived quite comfortably with my husband, then he quite suddenly went away and cohabited with a woman as "man and wife" and shortly they had a child; they are still living as "man and wife" and I have never seen him since. On hearing of the misconduct I got a separation order to prevent him taking away my (our) child. The separation order granted 10*s.* weekly, none of which I have had, as I hear that his means are only enough for a bare living with this woman and their child. He vows he would never return to me even if I would have him. I now go out and work to keep myself and child. I am now told that the separation order I was *forced* to obtain prevents my possibility of ever obtaining a divorce. Have I no remedy or am I to continue to live this life of misery and doubt?

I shall be pleased to hear the opinions on such a case. My relations may find the means if a divorce were obtainable.

Again asking you to forgive my troubling you,

I remain,

Yours faithfully,

To Lord Gorrell.

Your Lordship,

Sir,

May I beg to draw your sympathetic attention to the following *Re* Poor Law Divorce as under present discussion. Would you kindly take my case for consideration. After five years of unhappy married life my husband left me nearly two years ago (at the age of 25) and took another "person" with him to Scotland by whom he has children and with whom he is still living. He left me with two little boys totally unprovided for. My two little boys felt ill and by the doctor's advice I parted with them to . . . . Infirmary (where they still are). The authorities issued a warrant on their behalf and he (my husband) was arrested and brought up to . . . As he was arrested on a Guardian's warrant only my name was not mentioned. I knew little or nothing about the law and he got off with only having to pay to my two boys. They are still in the Infirmary whilst I am earning my living at . . . at above address. Do you not think my position a cruel one in the extreme? I have neither father, mother, brother or sister.

For the sake of such as myself don't you think that there should be divorce for those unable to pay thro' force of circumstances such a large amount as now demanded. I cannot do wrong tho' I have many offers to settle down as Housekeeper etc. and can in some cases even have my two dear little lads. I am twenty seven years in the prime of my life as you may say yet I dare not do wrong for my boys sake. Do you understand my position? My husband and I never cared from the first and I have yet to meet the man with whom my soul can mate and until then I can wait it is true but if there was possibly such a thing as obtaining divorce for the sum of three guineas as mentioned during your present committees discussion, I should feel myself entirely free to follow the dictates of my own heart when that time arrives. I could not in honour listen to any proposal as I am now placed, and yet I am so longing for my two little lads to be with me again that were I free I would sacrifice my personal feeling should it be for their comfort and welfare.

Apologising for taking your valuable time and wishing to show only how perhaps many others beside myself are similarly placed, I beg to remain,

Yours truly,

My Lord,

Having read some reports of Commission, I beg to place before you the case of my Mother who is 64 years of age. In 1882 my Father . . . run away to Canada with a woman leaving myself aged 13, my brother 17, and my Mother. After being away nearly 20 years, during which time my mother has supported herself he returned to this country owing to a law dispute with . . . and after petitioning His Majesty the King he has been sent on to . . . Asylum where he is at the present day I believe. My mother who was granted a Separation Order at the time has never received a coin from him. And I have every reason to believe my mother could have married and being in a house of her own but for the expense of procuring a divorce.

Yours respectfully,

P.S.—My Lord I also beg to state my mother who has held the position of housekeeper, to a large business manager in . . . , for the last . . . years, has only mentioned divorce to me once and said the expense was too great, but it seems to me hardly fair that the law which does not compel a man to support his wife should expect her to be true to his memory.

Respectfully yours,

Right Hon. Lord Gorell,

My Lord,

I am writing to thank you for your sympathy with the poor in relation to divorce as one who has suffered I know the misery which it entails.

I was a small farmer occupying some heavily rented land, having no capital except the few things about the Farm.

Twenty-three years ago my wife left me, the reason being that life was too dull in the country after coming from the town. Her pretext was a charge of cruelty in order to obtain a maintenance. She applied to the Magistrates for a separation order which they refused to grant, and which had they done I should have been unable to pay and someone to take her place in the house besides, as it would have resulted in bankruptcy. I begged her to come back after she failed to obtain the order, she refused and left the neighbourhood, and I could not succeed in tracing her for many years. Eventually I found out that she had married again and had a child, a daughter somewhere near . . . in New Zealand. I have the certificate of her second marriage in . . . [New Zealand] from the registrar at that town, wherein she described herself as a widow and myself as having died some years since on a certain date in . . .

I have applied to solicitors in reference to the matter and they tell me it will cost several hundred pounds to get a divorse and which I think is a great hardship especially after all these years of suffering. I appeal to you and the gentlemen on the Commission for relief in connection with the law on the subject of divorce.

Surely *seven years* desertion without cause should be considered sufficient grounds for a decree of divorce.

I remain yours obediently,

P.S.—I may say that I have lived here in the same neighbourhood all my life, and am . . . , and am also prepared to verify the statements I have made before the Commission if you think it would be of any service to those similarly circumstanced. If your Lordship could give me any advice how to obtain my freedom from these bonds I should be eternally grateful.

MY LORD,

I HAVE been greatly interested in the doings of the divorce inquiry; I have been married 17 years last . . . , 7 years next . . . my wife went to live with another man, She told me she thought more of his little finger than she did of me, altogether, as he was better off, better dressed, and more suitable for her in every way. I consulted Mr. . . . solicitor and he Informed me, that I could not get a Divorce for less than 150*l*. Unfertunately I did not posess that many pence, and therefore had no redress at law, but have had to live within 400 yards of them; through her conduct I had to give up 2 situations, and have only earned since then about 16*s*. a week while the man she is with makes 10*l*. a week, are the Diverce laws fair to me, I don't think so, why should I not have the same privileges as the rich man, I think I should have as much right to be heard in a court of law but the law denies me, on a/c of having no money.

My Lord if you can tell me any way out of my difficulty, or could give me any Information you would make me your lifelong Debtor, as my life has been and is still Hell upon earth, I have given you my name and address in good faith but not for Publication the letter can be read out at the Inquiry and published in the papers if you wish to but please don't give the address to the papers.

My Lord I Remain a 7 years sufferer.

P.S.—I have enclosed stamped envelope in case you could give me any advice.

Lord Gorell,
London.

To Lady Francis Balfour,
Royal Commission, London.

MADAM,

I HOPE you will pardon the liberty I take in writing to you, as you are sitting at the Royal Commission. I felt I should like to lay my case in front of you. In 1888 I was married to a man who turned out to be one of the Basest Scoundrels possible, after subjecting me to vile indignities and ill-treatment, he deserted me at the end of 8 years. I heard nothing of him for several years until I heard he was charged at . . . with Fraud, and by inquiry I found he had married another woman and subsequently was convicted for Bigamy since then he has had other terms of imprisonment, and was again sentenced to 3 years imprisonment . . . this year particulars of which I enclose. My whole life has been blighted and I am tied to this man, simply because the present system of divorce is not obtainable to poor people. I am employed in a shop and earn 17*s*. weekly and help support a widowed mother. It is the future that looks so black when I am no longer able to work. I have one son of . . . years of age, who is in the . . . and of course does not earn much. I am told if I were able to find the necessary money, I could get Free of him while he is in prison, but that is impossible, unless the Royal Commission will do something for such unfortunate people as I. I invite every inquiry into my affairs. I am now only 38 years of age.

I have the honour to be, Madam,
Your Ladyship's most obedient and
humble servant,

To the Royal Commission on Divorce Laws.

The Secretary,

DEAR SIR,

I HAVE followed with extreme interest, the proceedings of your learned Commission, the outcome of which, I earnestly hope will be to afford relief in such concrete and typical cases as my own.

Eight years ago my wife ran away with a lodger. Six weeks later she begged for forgiveness, which was granted, and I took her back. But the second state was worse than the first, for a few months later she decamped again, and has lived ever since, over seven years, with the same fellow. I was thus left in the lurch with two little girls aged about 5 and 6. The wife had had a boy which I thought was mine but now I know it was that fellow's. I have lived in lodgings practically ever since, leaving my poor girls to get on with strangers' kindnesses, but the last four years I have placed them in a boarding school, in which they will not be able to stop for ever, leaving when both are over school age. Thus, through the woman's sin, my daughters have been deprived of home and all it means to girls ever since they were little tots; the same applies to me, for I have had to put up with lodgings. On the other hand, the woman, living with another man these seven or eight years, has a home and children, enjoying the lot with impunity.

Now Sir, my daughters will soon be out of school, girls just over 14 and what have I for them? What "home coming" can I give them? They are too young to "keep house" for themselves and me; they cannot very well come with me in lodgings for "a single young man," were I to put them to work, they must come home sometimes surely? Thus because of the heavy expenses of divorce, I have never been able to free myself from this unfaithful woman, and by this time I might have had a home for my daughters. But no, the guilty party does not suffer in this instance, unless it be through her conscience, whilst I, who wishes to keep pure and live pure before God and man, have to bear *the* punishment, to deserve which I have done nothing. "Where there is no sin, there is no shame." Eight years ago and so ever since! I have never set eyes on her, neither do I know where she is. But her parents know or hear about her. Where would collusion be in my case, especially when I took her back once, and all the thanks I got was to run away a second time for good?

Thanking you for kind attention.

I remain, dear Sir,
Yours very respectfully,

MY LORD JUSTICE,

KINDLY allow me to make a statement in reference to the Royal Commission now sitting on the divorce laws, the proceedings of which I have followed from the commencement and I think a great many good suggestions have been. What struck me most was the evidence relating to desertion. Why can't the Scotch system be brought in and make desertion a cause for divorce.

I may state that I have been deserted by my wife some 16 years ago. Now its very hard lines one has to suffer so much on account of one person. I may tell you she sued for maintenance but failed because she had no valid excuse whatever. There was a mother-in-law in the case and she was the instigator. I may say there are two children of the marriage.

In this part 2 or 3 weeks ago there was a similar case and the man committed suicide on the railway after trying to drown himself a few days before. This was a man with a large family. Now I followed the evidence in this case very closely and it was exactly the same as what I had gone through years ago except the very last act, and I can assure you I only narrowly escaped that for it preyed on my mind many days. Now in my opinion its useless to blame this man for taking his life. From my own experience I believe it was quite natural to him and that he thought he was doing his duty. It would be brought on by the constant mental strain. I am not writing this from an individual point of view because I don't expect a law to be past for one only but I know several that are in the same predicament as myself and I am sure there are many throughout the country.

Apologising for trespassing on your valuable time,
I have the honour to remain,
Sir, your humble and obedient servant,

The Rt. Hon. Lord Justice Gorell.

Secretary Royal Commission Divorce Court.

DEAR SIR,

I HOPE and trust the efforts that are being made to enable poor people will, soon be at hand or some

remedy that will not entail much cost take my case for instance four years ago I was married to a man and after living with him nearly 3 months he disappeared, as he had been very cruel during this time the magistrates here granted a summons but he could not be found for some time and then we obtained his address from the . . . authorities the man being a . . . the summons found him in . . . Scotland. He appeared on the summons the case was adjourned for a month to see if the parties could come to terms. He never turned up at the adjournment and an order and separation was obtained the amount being 7*s.* 6*d.* that is four years next . . . . I have never seen him since the summons was heard, and not one penny have I received I am now and have been close on three years a Waitress in a Gentlemans house in . . . and they take a great interest in my case I am known and go by my maiden name with my employers permission they have also found a home for my infant I cannot describe my suffering before my child was born and afterwards through being deserted I was pointed out to everyone and through no fault of my own a warrant was obtained but the police could not get him I communicated with the . . . authorities and they say he has not applied for his pension since . . . 1907 but he has reported himself once, before he disappeared my parents and I found out he had married me under false pretences and had also tried to obtain various sums of money by false statements even the wedding ring was found to be brass all these facts were placed before the clergyman who married us and who said at the time the man wanted locking up I think it very hard at the age of 23 to be bound to a man I may never see and who so cruelly deserted and left me to face the world with my unborn babe and had it not been for my parents during the terrible months that followed God knows where I would have drifted, and as I stand I am neither maid wife or widow, enclosed you will see I have been seeking a divorce but on the present terms and the existing circumstances I will be obliged to remain as I am although I could remarry a honest man if I were a free woman.

To the Chairman of the Divorce Commission.

HON. SIR,

OF course I much prefer that my name is not made public, but I would like to put my case before you:

I am 49 years of age, and it is just four years and four months yesterday since my wife left me. She took with her the elder son, and has since enticed the younger one away. We shall never live together again: life for me was beyond all endurance, what with her cruel tongue and treacherous deceits.

I am in lodgings, and cannot think of refurnishing a home, as I do not know what her next move might be.

Is it a nice thing to contemplate that my life should be subject to her caprice?

Surely after four years' desertion I might be set free from her every claim, and seek some comfort for my declining years.

In your deliberations *please* be merciful to the unfortunate. I Remain,

Yours very Sincerely,

Lords and Gentlemen,

DEAR SIRS,

I HAVE been reading with interest the varies subjects on Divorce. I would like to say something regarding myself. I am a Married man with 2 Children. six years ago my Wife left me taking the 2 Children of the marriage with her since that time she has been living an immoral life; After 2 years I was able to put in a petition in the Divorce Court. But unfortunately however the cause was defended the day before the trial 7 weeks after the serving of the Citations.

To my great surprise I found that I was responsible for the costs of defending the case, which however I could not meet, What is one to do for the welfare of the children are they to be brought up in an immoral life as I am now unable to bring the case to court. I humbly pray that your Lordship will give me a little advice, I am only a poor working man.

I am Dear Sirs, Yours Truly,

To the Hon. Henry Gorell Barnes,
Secretary to the Royal Commission on the law of Divorce.

DEAR SIR,

MAY I bring before you my case in which I think no reasonable man would or could object to my having a Divorce it is a sad one.

22 years ago my wife drowned her child on becoming insane without warning and no proceedings were taken, I had to put her away in an asylum she being extremely violent, I have had her put in three different asylums, and she is now in the last one of unsound mind and will never be better this I have from the Commissioners of Lunacy in Londn. I took the responsibility instead of the government in, keeping a criminal lunatic, which I might have had her tried for drowning her child. I was a young man at the time, and I furnished a house and never slept in it and the cause of insanity is no doubt hereditary for I have traced it in the family. I have given up the sea faring life and I think after 22 years I ought to be allowed to be divorced or I may say no one situated with a wife as I am, should be debarred from marrying again. I should feel it a great kindness to me if you do all you and your committee can to have this law of divorce in England altered. I have one daughter only and she knows nothing about her mother being in the asylum, I have thought it best not to let her know it, and I will do all in my power to prevent her marrying for I would not if I possibly could allow another man to go through what I have. It has been a millstone round my neck all my life time.

Should you wish I will send you on the letter which I received from the Secretary of the Commission of Lunacy and if Mr. . . . does not know that there is a permanent lunatic he can read it and add to his store of knowledge, for he stated in Parliament that he was not aware of there being a permanent lunatic.

I remain, Sir,

Your obedient Servant,

P.S.—I may state that I am not doing or at least asking for the laws of divorce to be altered for the purpose of saving the expense of keeping or paying for my wife. But that it is a disgrace to humanity that a man shall be bound to a lunatic, and debarred having a wife, and by so doing drive him to immorality and no end of misery.

I think the Bible or St. Paul says if a man marries and the wife finds no favour in his sight write her a bill of divorce so I fail to see in my case at least how a lunatic can find favour in anyone's sight, and I fail to see how any minister of government or church could object to a divorce in cases like myself.

To the Hon. Henry Gorell Barnes,

DEAR SIR,

I READ with deep interest the article on the Law of Divorce in the Daily Chronicle of Friday last. Does this law introduce the Lunacy Act? I earnestly ask cannot something be done to bring that act forward I myself was married at the age of 22 years after 2 years of married life my wife lost her reason and was taken to an asylum leaving me with a baby 3 months old. This is 12 years ago, I am now 34. I have a doctor's letter certifying my wifes case is quite hopeless yet I am bound and compelled to live an unnatural existence. Mine I know is only one case in thousands or why are the asylums so crowded. These poor creatures are dead to the world. Why cannot something be done to free those who are left behind thereby helping to make England more pure and the cases of forced immorality less. How can one expect a moral country where such laws exist.

Apologising for troubling you,

I am dear Sir,

Yours truly,

HONOURED SIR,

HEREWITH I beg to submit a case (my own) for consideration by yourself and other members of His Majesty's Royal Commission appointed to consider the divorce laws at present in existence, as related to the conditions of the poor.

I remain, Sir,

Yours respectively,

The Honble Henry Gorell Barnes, Esq.

THE Honourable Gentlemen of His Majesty's Royal Commission appointed to consider the present Divorce Laws.

Case.

I . . . am a Subordinate . . . Official and have been in my present post . . . years at a salary equal to a trifle under 2*l.* per week.

After having been in my present post a little over a year I considered I was in a position to marry and did accordingly. In the course of the next 6 years my wife gave birth to two children, a boy and a girl, the boy being five years old when the other child was born.

Soon after the birth of the last child, my wife developed signs of insanity and although I tried to avoid this course, I became compelled to have her removed to an Asylum. I since find out that the insanity was hereditary, which fact was previously concealed from me. This occurred nearly seven years ago (and apparently she is a hopeless case) since when I have found it necessary to break up my home and part with my children to a person who has no other interest in them than the periodical payments I make. Did my circumstances permit I would much prefer, as my children are growing up to have them under my own personal care.

Observations.—I do think that some alteration in the divorce laws are necessary, to make it possible for such as are in the same unfortunate position as myself (and I have met others when visiting the asylum) to provide a home and proper parental training and care for the children of such a marriage. I advance this with all due respect to my present wife, who I will say that when sane was a model wife in all respects but who now does not appreciate any affection shown by her husband. If I was to consider a housekeeper in the first place a housekeeper would require a salary, which would reduce my finances below the possibility of housekeeping. Secondly, I should have to engage someone who was well advanced in years and who would therefore be incapable of doing the necessary household duties of a working man. I know of more than one person nearer my own age, who might also be a friendly companion to me, and would be willing to take charge of my household, and who have every regard for my honourability. They dare not, because the world at large would brand them as immoral, however proper and moral their life might be. Therefore I say an injustice is done to us in so far that it is forcing a man who would be a respectable citizen into an immoral course, and at the same time sacrificing the future of his children who are the men and women of the future.

I respectfully advance the theory that some alteration might be made to release one from a marital tie, which is of no advantage to anyone concerned, thereby in some way make conditions such, that the children should not be sacrificed for the sake of Mrs. Grundy. I advance this solely for the sake of my two children whom it pains me to be separated from.

Yours respectfully,

SIR,

I BEG to apologise for writing to you, but as I have cause to be interested in the Commissions of enquiry into the present state of the divorce laws and being very anxious as to its results, I am sure you will excuse it, and although you are familiar with such cases I have thought it may be right to give you the particulars of my own. I was married a few years before my wife became insane, she has been so continuously for the past 18 years and is certified to be hopelessly incurable by the Medical Superintendents and in a recent letter from the Asylum at . . . she was described as "Mentally lost." I was not aware at the time of marrying that insanity was in her family, her father having died of softening of the brain. Although I have no means, if money could be found, would such deception form any ground for applying for a divorce? In the meantime, Sir, I should be very grateful if your enquiries should result in the law being altered to remedy such a monstrous injustice. With my best thanks for the efforts that are being made to this end, and apologising again for troubling you.

I am, Sir,

Yours very respectfully,

To the Royal Commission Law and Divorce.

GENTLEMEN,

I HAVE the honour to lay the following case of Lunacy before your Royal Commission.

I have a wife . . . who has now been confined in the County Asylum, . . . for over thirteen (13) years with no prospect of her ever being well enough to come out. During all this time I have been paying 5*s.* per week for her. I am a general working . . . at 27*s.* per week. Before being sent to the Asylum she was at home with me for two years causing great expense for Doctors, etc. she also, I am sorry to say got me into serious money troubles, wasting my wages, so that, after she was sent away numerous bills, of which I knew nothing were sent into me; to meet all these extra expenses I had to let my house rent run up to 70*l.* odd, which has not yet been fully paid.

To make matters worse I am a great sufferer from Rheumatism, my last illness laying me up for eight months with rheumatic fever during which time I could not earn a penny, at the same time incurring heavy expenses. Having an unmarried son I must keep up a home and pay a woman to look after the house while I am at work and do for us.

Now considering the number of years my wife has been detained, together with my illness, also four of our family besides myself are paying poor rates, I made application to the . . . Board of Guardians asking them if they could not see their way to reduce the weekly payment, as it was entirely through ill health that I had got a few weeks behind—their answer was pay up, or legal proceedings will be taken.

I think this very hard having tried my best to keep out of debt. What is a man in my position to do as I cannot afford a lawyer to plead my case.

I am Gentlemen, Yours very respectfully,

Mr. Gorell Barnes.

DEAR SIR,

IN reading the papers I have been pleased to see how you have spoke out about the divorce for the poor and I hope such cases as mine will be taken up too.

My husband has been eight years in one of our largest asylums, he is an epileptic and for nine years before that when I lived with him it was drink drink no pleasure in fact he used to have it for breakfast, he was sent away once for the delirium tremens so you see I have had very little pleasure of my marriage. I think it is high time something was done for such cases as mine there are other cases in the town I have two friends who are placed same as myself and has asked me to mention it.

I should esteem it a favour if you would answer this and let me know if lunacy is included in the Royal Commission.

Yours sincerely,

To the President of the Royal Commission on Divorce.

DEAR SIR,

I AM not aware of the class of evidence which will be brought before you during the sitting of the Royal Commission but I would like to bring before you my case not that I have or ever have had any intention of seeking for a divorce but to show the injustice to which one may be put under existing laws. I have been married for the past 14 years to a woman who when I married her appear to be in perfect health but after 4 years had to be certified as a lunatic and it was then that I discovered that she had already been certified before I married her; having become slightly better she was allowed home, but after a year had to be certified again, and was again sent home where she now is, and may at any time have to go away again.

My contention is that any man or woman having contracted a marriage without the knowledge being disclosed of either the one or the other having been in an asylum before marriage that they should be able to get a divorce and that for the sole reason that it is

unwise that those who have been certified should be allowed to propogate their species and that for the good of the state.

I remain,
Yours respectfully and faithfully,

DEAR SIR,

IN the Weekly Dispatch of to-day's date, I find in the evidence of . . . that he states that divorce should not be granted for lunacy. Now the following is my experience of married life with the wife in the asylum 12 years ago my wife was taken to the asylum "after twice attempting to do me harm with a knife," and I am informed that she will never come out again although her health is good, why should I have to pass the remainder of my life alone, I am only 43 in the prime of life, so you see what a great hardship it is for one in my position. You may use this letter if you think fit but I would rather my name was not mentioned at the present stage.

I am, dear Sir,
Yours respectfully,

Gorell Barnes, Esq.,
Secretary, London.

MY LORD,

AS Chairman of the Divorce Law Reform Commission, I take this liberty of addressing you, and shall esteem it a favour if you will inform me as to whether the Commission will discuss the question of divorce, as regards an insane partner. I am only a young man 29 years of age, and my wife has now been confined in various asylums for nearly 3 years, which seems to me nearly 30 years, and the Doctors give me no hope of her ever recovering her senses, but tell me that she may live on to be an old woman.

I am quite willing to provide for her maintenance but it does not seem right that I should be debarred from marrying again, as there were no children to the marriage, and to live a life such as I live is almost unbearable and is enough to drive one to desperation, the best years of my live vanishing and nothing to look forward to but years of misery. If I was an old man with children around me I should feel more content, but I am a man and have the feelings and desires of a man and as I had been married some years, you can understand what it means to have a wife taken away from you, and as the law will not allow me to marry again there appears to be only one course to take, and such a course debars a person from decent society, as the law now stands. Cannot something be done to remedy such a condition as mine, as I lead a good life and have no desire to do wrong, if such can be called wrong, but surely I cannot be expected to live a life such as I am now doing until I am an old man.

If it is not asking you too much, should you consider that I was doing wrong to marry again, and is it probable that I should be criminally prosecuted, for doing so, under such circumstances as mine. I know that as the law now stands the marriage would not be legal, but I live in hopes that things will be altered, and to be placed in such a position as mine is enough to drive all hope and ambition from any man.

I hope you will excuse my writing to you at such length, but I know of no one better than yourself to whom I can open out my troubles, as I know you have spent your life in solving matrimonial troubles and trust you will be spared to see the present Law as regards marriage, so altered that adultery will not be a matter of compulsion.

Awaiting your kind reply,
I remain,
Yours faithfully,

The Right Hon. Lord Gorell, London.

YOUR HONOUR,

SEEING a paragraph re "Lunacy Inquiry" I was married to my wife 18 years before she became insane, she had to go to a Private Asylum, and the doctors say there is no hope of her recovery, and she has been there 15 years. The remark in reference to early insanity is quite correct, but what about the man after 18 years? surely that ought to be sufficient for the Lunacy Commissioner to go into the matter and grant a divorce, say in 6 or 7 years after the person has become insane especially as the case is hopeless cases like those ought not to be brought up to London when they happen in the country. Please ask your friends at the Bar if things cannot be altered. There are hundreds of cases like mine and I think they ought to have consideration. In reference to the remark in the paper of the Royal Commission that a man or woman having lived together for 15 years without showing any signs of insanity during that time, and then one or the other becomes hopelessly insane, should have all the pleasures of life taken away from them. There is many a man or woman suffer through no fault of their own and have to be separated for years without any redress.

Yours faithfully,

MY LORD,

BEING intensely interested in the controversy now taking place re Divorce will you pardon me for bringing my own case before your notice which I am convinced is not a solitary one by any means.

My husband for the first ten or twelve years of our married life was a clerk in a . . . office, and was everything that a wife could wish but he accepted a post as representative of a . . . which marred his whole career and he became so violent and debauched in his habits that I sought and had a Judicial Separation with maintenance for myself and 2 children, he never contributed anything and has been an inmate of a lunatic asylum for years, with no hope whatever of recovery, this has been going on for nearly 12 years and my children having married I am alone and cannot of course marry again under the existing laws and therefore I do trust that good may come out of all your learned discussions not only for myself, but for many others who are similarly situated.

Trusting this may come under your Lordship's notice and apologizing for my lengthy letter

I remain,
Your Lordship's obedient servant,

If you make this known, kindly withhold my name from the public press.

YOUR LORDSHIP,

SEEING your Lordship's speech as Chairman of the Divorce Commission in reference to insanity I beg that you will press your opinion on that particular matter. As one whose wife became insane 14 years ago I think I am able to realize to the full the benefit to be derived if such an important suggestion were made law. No one except those who go through the terrible ordeal can have the slightest idea of the mental anguish and torture through which one passes through at a time like that. it is a thousand times worse than death and goodness knows that is bad enough. I have seen my children neglected cruelly treated and verminous and me powerless to do anything to remedy it. I could tell a true tale that would make a strong man weep. May I ask this question if this is the case where a wife is afflicted how much more terrible it must be when the husband becomes insane. I have cause to feel glad it was not me instead of my wife, for I cannot imagine how my wife who was a shop assistant before marriage could possibly have brought up our three children. In conclusion let me say I am sure that the law as at present is a direct incentive to immorality in cases such as these. What can a woman do, for the sake of a home and food for her children and herself if the offer is from say an old school friend or an old lover she would indeed be a strong woman who would see her children want food and clothing when offered to her in all honour but that of the law of the country. I sincerely hope that if relief is not given to the man it most certainly should be given to the woman, believing your Lordship will do your best in this particular direction.

Humbly,
I am your obedient servant,

The Secretary,

DEAR SIR,

REGARDING the conditions of divorce, should like to cite particulars of my own case, as emphasizing the need of legislation to provide increased facilities

and extend grounds on which a petition can be lodged. Was married at . . . in . . . 1897, my wife becoming an inmate of the . . . Asylum in . . 1899; she left that institution without being discharged in . . . 1902 and has since been cared for at home, but still suffers from some form of incurable lunacy.

Needless to say we have no children; though legally married I find myself clean cut off from all such intimacy which should exist as between husband and wife, and am virtually without a partner in the world. Of course in the circumstances I would gladly have my freedom, and can well believe any similarly placed, may not infrequently be driven to adopt a course of immorality which under different conditions they would doubtless have shunned and been easily able to avoid.

Concluding let me suggest Insanity should be a good ground for the dissolution of marriage when on either side the same has been clearly established.

Yours faithfully,

To the Lord Mayor.

SIR,

MY husband has been in an asylum at . . . 15 years and is incurably insane. I have been in service since that time now 55 years of age and getting too old for service can I get a cheap divorce in . . . as I have not much money an old gentleman offers me marriage and a comfortable home if I can get free he is 60 years of age my life has been very hard to be tied to a man who has never kept me; his father was in . . . Asylum 20 years I did not know his family when I married as I was young.

An answer at your earliest will oblige,

P.S.—I only get out Wednesday evening 7 o'clock to late to come to the court to see you personally.

Re Royal Commission on Divorce.

DEAR SIR,

I TRUST you will not consider it impertinence my writing you on this matter. I wish briefly to call your attention to this as relating to Lunacy and my own experience.

18 years ago my wife became insane and was confined in a lunatic asylum where she now is, I was left with 5 young children the eldest 12 the youngest a baby, at that time I was a traveller for a small firm. I however had to give this up and take an inferior position that I might be home with my children. I am quite sure if your Royal Commission knew the difficulty socially and personally of a man placed in this position they would arrange that some means should be adopted to remedy this not only for our sake but for the childrens sake.

I am now 53 years old and my children are now grown up that any alteration of the laws at my time of life would not affect me.

I am therefore addressing these few lines to you that others who are younger may reap some benefit from my experience.

Yours respectfully,

SIR,

I HOPE I am not taking too great a liberty in writing to you. My wife has been in . . . Lunatic Asylum 18 years next . . . "A hopeless Case," and as the law stands now, I am to remain neither married nor single, while everything is being done to assist evil doers getting divorces.

Sincerely yours,

Please accept an apology for writing.

DEAR SIR,

I HOPE you will forgive the liberty I am taking by writing to you, my husband has been in . . . Lunatic Asylum for six years now so I want you to tell me shall I be a free woman, as there is a good man wanting to marry me. I have got a certificate from the Medical Superintendent telling me that my husband is an uncurable case, I have three children, and I do hope you will tell me right. I am a servant at present, will you please let me know soon.

I remain dear Sir,

Yours very respectfully,

To My Lord Gorell.

DEAR SIR,

re *Divorce*.

I HOPE the existing law will be altered so as to give the poor or working classes a chance that they may avail themselves as well as those that can under existing expensive law and further if the working class whom it affects was allowed to give evidence on behalf of their own hardships and grievances instead of those that are not in a like position as themselves as if they were they would I think have more sympathy for the deserving and unable as in the mens cases I know off.

I would also to give mine own in point of this contention and no doubt there are hundreds of simelar. I married a person that had a deranged mind before marriage and from what I know of the law I am legally entitled to a divorce on those grounds but the expenses incurred prevents me therefore there is no alternative under existing law but to go on year after year now near 20 years which I consider a great hardship whereas if within reach of my pocket I should long ago have availed myself of its blessing therefore I really think it would be a great boon to such if the alterations was affective and no doubt it would be a wise step towards morality for why should not the deserving poor be debarred living in misery on a/c of no cash to go to London whereas if conferred on C Cts and cheapened they would then be able trusting this will have some consideration and be helpful.

I remain,

Yours truly,

MY LORD,

I HAVE read with interest the evidence given before the Divorce Commission and note that most of the witnesses favour granting a divorce to a man if his wife is a permanent imbecile. Now my Lord as a man who has a wife that has been sent out of . . . Infirmary as incurable and who is now laid in bed suffering from disease of the blood vessels to the brain, is wrong in her mind, blind and has lost the use of her arm and leg I strongly object to a man being allowed to shirk his responsibility by granting him a divorce. My wife has been for years like she is to-day and I have tried to obey the marriage law which says "in sickness or in health" out of my wage of 35s. per week and the state has not, or will not do anything to help me but if a man was allowed a divorce in cases like this he takes advantage of the law and promptly pushes his wife on to the state for them to keep. Now my Lord why should I have to cast a stigma upon my wife's relations and upon my children by getting a divorce? before the state would help me. Should they not sooner help a man who is trying to do his duty rather than make the way easier for a man to shirk his responsibility.

Yours respectfully,

SIR,

I AM writing to ask how I can get a divorce married in 1899 when I was 19 to a man 25 he led me a terrible life for 7 years. I have 1 little girl. He ill-used me and I have had such black eyes that I have not been able to see for 2 or 3 days have lost the hearing of one ear through a terrible blow and he use to keep me without money for 6 and 7 months at a time bringing in a bit of food when it pleased him. But great part of the time I went to work to keep myself and child I left him once but went back again as he promised to be better but he got worse and not content with ill-treating me he went away and came home with a disease. I stayed then as he begged of me and said again he would be a better man but all no good he took to drink then and after 2 years half hard drinking it has ended in him being a lunatic having been in a asylum for 3 years and the doctor says no hopes of him ever getting any better. Not only that when he was put in an asylum it came out that insanity ran in the family he having a sister that had been in an asylum for 14 years and I did not know it when I married him. The end of it now through ill-usage and hard work my health is breaking up. I am 31 and have not any means of getting a divorce as the money I have earned as had to keep the child and all so to clothe myself sometimes I feel like ending it all as there seems nothing to live for and if I was free

how different it might be I might marry again and be comfortable other wise all I can see is the workhouse as I cannot earn enough to save; my wages have been 18*l.* a year board and lodge, it is only like dragging out an existence hoping and trusting they will bring in cheaper divorce so as to free me from this life of misery I am working now in my maiden name because when I went after any work in the name of Mrs. . . . they wanted to know if I was a widow when I said no they would say O he might get better in a month or so and then come out and then you would leave us but I never intend going back to him even if he did I could not have the life again hoping I am not intruding on your precious time and also hoping you could tell me what to do thanking you in anticipation.

The Hon. H. Gorell Barnes

DEAR SIR,

HAVING heard that you are secretary to the Commission now sitting for the purpose of amending the divorce laws, I take the liberty of submitting my case to you, from which the present law seems unable to offer any freedom other than separation, and which may be a point worthy the consideration of the Commission, to the great relief of probably many in a similar position to myself.

I married ten years ago and within a fortnight after my marriage I was somewhat shocked to find that my wife was an epileptic subject, neither she nor her parents having acquainted me of this fact, although she had suffered eight years prior to her marriage. Since then however she has been steadily getting worse mentally, in spite of the many treatments she has been through at a great expense to myself, her father having absolutely refused to help in this matter.

The fits nearly always occur at night and weekly, and certain very unpleasant conditions take place as a result of them, she losing all control over her natural functions, which I have been obliged to attend to myself. Added to these conditions her temper and jealousy are intolerable, she having on several occasions assaulted me, without the least provocation.

The object of a marriage like this is entirely defeated as I could not possibly, under the circumstances, risk the birth of a child on account of the possibility of its being similarly afflicted, and also it was more than probable that a miscarriage would have taken place each time, owing to her complete loss of control.

Sexual connection was nearly always followed by the fits and one of the medical advisers I had for her informed me that this (sexual connection) should never really take place, as it affected her nervous system. You will thus see that she was physical incapable from the first, of conforming to the conditions of marriage, and for the past ten years has been a burden to me.

Her father is in a comfortable position and has a good home, and I feel that it is his duty to take the responsibility of his daughter, whom he so unfairly foisted on to me, and that I should by law, be again given my freedom, by the marriage being made null.

Yours faithfully.

DEAR SIR,

I WAS married in 1892 and soon after my wife had Influenza and went mad, shortly after she was Locked up as a wonding Lunatic and sent to . . . Asylum where she has been ever since, the doctor tells me she will never be right again. I am only A Labourer. I have no family and no Reliations and have been knock about in Lodgings all my life. Age 45 Good character and steady. I think it is Hard Lines to have to go to the end of my Days without being able to put my Feet on my own Fender.

I am, Sir,

Yours,

HONOURED SIR,

SEEING you are on the Divorce Commission, might I kindly ask if you would bring my case before the Commission.

My Wife is a Hopeless Lunatic in this Asylum having been there now over 23 years and I am so tired and weary of it, as I have to pay 5*s.* a week and my means is but 17*s.* a week, and my rent is 5*s.* a week, I should be very thankful if I could be free. I suppose I could not get her into any asylum in or near London where she would be free of charge to me or I could manage 2*s.* 6*d.* a week. If you could help me in any way should indeed be very thankful.

I remain,

Honoured Sir,

Yours faithfully,

DEAR SIRS,

HAVING read about the Royal Commission and I am a sufferer through my wife being afflicted with Insanity and have been so for 24 years which has caused me to live an Imoral Life which I have no wish to do Could the law think fit to grant the marrage Trusting this will find favour with you Gentlemen,

I am,

Yours respectfully,

Lord Gorell.

MY LORD,

SEEING you are taking evidence of the Divorce Law of Lunatics I beg leave to state my case which is one of very great hardship in bringing up a family. I am in a small way of farming, my wife has been in . . . Asylum for near six years and no hope for her recovery. I am left with 5 children oldest 12 years. It has cost me 40*l.* a year and wages to pay for someone to look after the children. I am nearly ruined and there is no redress at present so surely something can be done. Could you kindly let me know if such an act will pass and if it will be long in coming into force.

Otherwise I will have to take her home and suffer the consequences as I cannot pay any more without the children suffering and leaving my farm.

Your obedient servant,

P.S.—Hope I am not doing what is not right but it will soon take me the same road, and leave the children without a home.

TO LORD GORELL,

As you are taking evidence on the Royal Divorce Commission I take the liberty in writing you.

am a working man 37 years 2 children 8 and 12 respectively. My wife has been confined in a lunatic asylum for over 7 years a hopeless case. My children I have had to put away in a home, I am fond of children but never have been able to give them my own home comforts. I should welcome a new law, were I might be released from my burden and allowed to marry again.

I might add in my small sphere I know four men with wives in Asylums varying from 7 to 15 years confinement who earnestly hope through your endeavours on the Divorce Commission we might be able to start life afresh.

I am, dear Sir,

Your obedient servant,

DEAR SIR,

I HOPE you will excuse me I dont know if I am doing wrong or no by writing to you but I have been impressed so much to do so.

I am very much interested in reading the Daily News on the subject of the Divorce Commission and I like to hear the opinion of other on the subject what makes me interested in the subject I am placed under one of the conditions mentioned in the debate namely insanity my life since 8 years old as been a up hill one left on my own since that age both parents being dead. When I came to the age of 22 I married one what I loved but unknown to me she began to have epileptic fits a few months before I was married I only found it out fortnight after I married when she had the first one at home I took her to the best doctor in the town but he told me he could not cure her he said there was only one hope and that was by having a family as that might clear her of them and told me not to fear as the offspring would not take fits on account of her as hers had come through a fright we had a family of 6 daughters and two sons. When the youngest was about 1 year and 6 months old we had to take her away to the Lunatic Ward in the . . . Workhouse and when she had been there about 5 month she gave birth to a little girl making 9 children the child was

kept in the house and I must say was well cared for and loved by the nurses but happy for my sake it died when about three months old which gave me a great relief. 6 months after that she was sent to . . . County Asylum that was in 1902 and as been there ever since and they tell me there is no hope of her ever coming out again.

You see I was left to struggle with 8 children and bring them up, and I am only a working man and many a time when I have been pressed for money I have been tempted to do away with myself and would have done but for the children's sake. I have now three married and have five at home all dependent on me and it take and I find it hard worke to make ends meet. I have a little . . . business but its a hard work to keep up. My wife as been away for 11 years and with her being there I feel myself tie up and cannot make headway if I had been free I could have made life happier as I have had some very good offers and could have done well but I am married and the law says I cannot move while she lives so I shall have to struggle on and when all hope for betterment on my part comes it will be too late when you see opportunities keep passing you by it make your life so miserrable that tongue cannot tell. I am now 53 years old but feel young. I think a case like mine one ought to be freed and at a very small cost I should like a word as to what you think.

I am,
Yours truly,

P.S.—Excuse and forgive me if I have dont wrong in writing but when you hear from one who has suffered much you can rely on it better as no one who has not gone through can tell the feeling of one that is so tied. I could write a lot on this subject but it would perhaps weary you.

My Lord,

I hope your Secy. will pass this letter for you to read. The cause is that separations lead to guilty misconduct myself being the sufferer of what I have seen the company my wife keeps. I have tried for a perfect reconciliation but failed. I am a working man a mechanic but not working at my trade through depression of trade been married 22 years this is a most painful position to be in. It is against my advancement and against society. Separations should be abolished.

To Lord Gorell. Yours sincerely,

Memorandum from . . .

To the Hon. Henry Gorell Barnes,

Dear Sir,

Re Divorce law reform.

It is with very great relief that I notice this matter is having attention and I hope and trust that before long it may become law, my own case is as follows.

I was married at the age of about 23 years full of hope and life, with the hope of becoming an honorable man and citizen, unfortunately my wife took to drink with the usual result, eight homes I made her in 5 years, but none would satisfy her, the end of it was a legal separation, which has now been on for nearly 10 years. Oh the misery no one can tell but those unfortunate people that are tied for life to a woman that lives apart from her husband, it is even worse in a small country town like this, where everyone knows, you are shut out from any society, you dare not form the companionship of an honerable woman, you can have no society of the opposite sexes, I have to live my life lonely and sad simply because I made a mistake in early life, before I had experience of the world.

May I prey of you to consider those people that are living apart for long periods by legal separations and give them relief from this long and lasting agony. I am but a small . . . trying to do my best and live an honorable and upright life, but at times it is hard.

Thanking you in anticipation and wishing you every success.

I am, dear Sir,
Yours faithfully,

The Hon. Henry Gorell Barnes.

Sir,

As the Commission to consider the divorce laws will presumably, invite evidence bearing upon various phases of the question, I respectfully submit my own case in illustration of a very common hardship, and in the hope that such cases may come within the scope of the Commission's enquiry.

Twelve years ago I separated from my wife owing to acute domestic differences promoted by neglect of the home and children, one of whom died through lack of proper attention. A deed of separation was drawn up by our respective solicitors at a cost of twelve pounds to myself. I made an allowance of one pound a week, and agreed reluctantly to give my wife the custody of two of the children—girls.

Some time afterwards these children (and the mother) are found in such a condition—dirty and verminous—that the S.P.C.C. took the matter up and the mother was only saved from prosecution by a doctor's certificate to the effect that she was mentally incapable of the custody of the girls, since when I have had charge of them. I now allow my wife ten shillings a week — a big drain upon my resources, especially as I had to defend in court, at considerable expense, an application entirely vexatious and that failed ignominiously. I cannot charge adultery against my wife, but we are as irrevocably parted as any divorced couple, and I respectfully suggest that such a case should come under the same category as those adjudicated upon in the proposed provincial courts. That is to say, if the Commission recommends the substitution of divorce for judicial separation, mutual separations (arising from such experiences as mine) proved not to be of a temporary character, should, after a specifically defined period, be declared just cause for a decree nisi. If I could marry again I would willingly continue the alimony until such time as my wife also married, and such a condition of divorce should be made in all cases when there are no visible means of support.

My course of action twelve years ago was entirely approved by my committee (I am . . .) in whose service I have been since a boy.

I am Sir,
Your obedient and humble servant,

Dear Sir,

In reading the daily paper I saw a account where his majesty the King has commissioned several ladies and gentlemen to see what can be done for poor women concerning divorce and I thought it would be a good thing for me as I had had 16 years of trouble and misery through a bad husband and I could tell you a very sad tale of all the troubles and trials I have had to go through he was ordered by the magistrates to pay me weekly money through a separation order I had through cruelty he is a joiner by trade and can earn good wages but he will leave one job after another so as to defie the law and not give me my money I have had no money from him for 10 years for when I find him he will leave his work and go into the workhouse and then appear before the magistrate in workhouse clothes I do wish I could see one of your ladies if they would be so kind as to make an appointment with me I am sure I could tell them something that might help them or give them some idea how to get at other cases for I have gone through such a lot and I am sure I am situated much worse than a widow for I am never entitled to any of the Benefits widows receive and I am 67 years and of course not able to do much so dear Sir if you will please kindly consider my case I shall be very grateful to you and you will find me very deserving.

Thanking you in anticipation.

I am,
Yours respectfully,

P.S.—I should have stated under a Magistrate's order I obtained the separation.

Dear Sir,

I am now taking the great liberty of placing my full case before you has I saw in the Star of your meeting on the 4th inst. I think myself there is room for a great alteration in marriage laws and separations

I write to say I had a separation from my second wife . . . the . . . 1897 and through no fault of my own my paper is clear to show. On her side it was through neglect of my four children of the first marriage and dirty habits and bad management I do not intend to ever make it up but at the same time has the law is now you cant marry again its like two lives blighted my family are grown up now but they cannot act as a good wife could do if he could marry again.

I am,
Yours obediently,

Lord Gorell.

DEAR SIR,

WILL you pardon the liberty I am taking in writing to you. For a long time I have anxiously awaited the result of your endeavour to get justice for poor people. This is my story twelve years ago I was granted a separation by the . . . Justices from my husband with 1*l.* a week, which he only paid under compulsion until three years ago when he disappeared.

His people could but will not tell me and I am too poor to trace him. He treated me cruelly and I still suffer as the result. For years he has lived with another woman and there are children by her, I believe, as the law stands, there is no remedy for me.

Had I known at the time what a painful position it is for a woman to be separated I would have got a divorce instead. I am honest enough to tell people the truth when seeking a situation they seem afraid of a woman so placed. May I beg of you not to cease your efforts to get justice for us, for I am sure there are hundreds of poor wives in the same position as myself. Can I compel his people to tell me his address? It seems such hard lines that he should spoil my life and go free. I am not strong and have a struggle to live, as things are I cannot marry again. I have read your speeches on the subject, you are absolutely right.

Yours obediently,

MY LORD,

HAVING read in the Daily Mail this morning . . . opinion on separation without the right to marry again may I be allowed to uphold his opinion from experience. My case is this. After an engagement of many years I married in 1899. A few months later I discovered my husband married me for what he thought I possessed, after a wretched life with him for 2 years my position became unbearable. In 1904 I obtained from . . . a judicial separation. Mr. . . . being my counsel. Sir. . . . recommended alimony. This part of my case came before Mr. Registrar . . . who decided I was not entitled to alimony. My husband brought a false charge of insobriety against me in defence, and did his best to degrade me in every way. The best part of my life has been wasted upon him, my only recompense being that I am not compelled to live with him. In 1904 while staying at a boarding house, a gentleman paid me some attention and after a time pointedly asked me—are you a widow? I was surprised at the question, and fearing the manner in which I might be regarded by the other guests in the house, were my real position known, answered on impulse—Yes. This was a wrong course to take but I regarded the acquaintance as a casual one and of no importance. The acquaintance lead to a proposal of marriage, when I had to disclose my true position. If I could have obtained a divorce at this time, (3 years after I had separated from my husband) I should now be a happily married woman, and probably a mother. I am childless. I believe my case to be a common one. A healthy, and moderately attractive woman, living apart from her husband, not infrequently meets a male acquaintance whose friendship develops beyond the platonic stage, they are the best of friends but marriage is impossible. What is frequently the result of such an acquaintance? Why should a woman living a perfectly moral life, never having spoken to, or had any communication whatever with her husband, say for 7 years, be debarred from an honourable marriage with another man? Is the temptation to live under the protection of the man that loves her a great one? How many women are there to-day for whom this temptation is too great? The present form of separation to the moral man and woman is a cruel one, but it offers every excuse, and every inducement to the immoral.

Since 1901, I, for one, have lived a life of loneliness, the law forbidding me to accept the great happiness that could be mine, were I in a position to obtain a divorce.

I have the honour to remain,
Your Lordship's most humble and obedient servant,

Your Lordship
Lord Gorell.

YOUR LORDSHIP,

AS Chairman presiding over the Commission dealing with separations etc, I as a man thats has been by the law separated from my wife, I should like to give you something tangible to place before your colleagues on the commission. It is as follows about the . . . in the year 1900 my wife summoned me to appear before the magistrates at . . . in Lancashire as a deserter from her and family the result being I was ordered to pay 4*s.* per week. Well, Sir, for the first 3, 4, 5 years or so, I stayed in my own town and got quite careless. Afterwards I came here to . . . after travelling to London etc. full of remorse however I am at present in employment at . . . I might just inform you I am only an ordinary working man. My wife I admit was and is much better than I am or perhaps ever was. We have 8 children all in . . . and now and then I run over to see them as I cannot help it and I say good luck to them, only I have missed home I am in lodgings and there is no place like home.

Yours respectfully,

To Lady Frances Balfour.

MY LADY,

MAY I write and tell you what caused my sad life, the real cause was never allowed to become known. I was granted a judicial separation in 1893 and the children were given to me. My husband was not made to maintain me because I could teach and earn a salary, which he was allowed to call my independent income. When I broke down in 1907 he was only made to give me 5*s.* per week, because I had a breakdown allowance of 13*s.* 4*d.* per week.

Thus my husband was helped by the Separation, because it set him free to live as he pleased; and this freedom was all that he wanted; he had been trying by systematical cruelty for eight years to obtain it. He was not even made to give me the 5*s.* per week until the following . . . after my breakdown.

I am,
Yours very respectfully,

TO LORD GORELL,

MAY I venture to state to your lordship the bare facts of a case which seem to suggest a direction in which the divorce laws might be improved. A young lady, separated from her husband by mutual agreement, lost sight of him ten years ago, when he ceased payments to her. She went as housekeeper to a gentleman, in order to maintain herself, and an attachment arose between them. About a year ago the husband turned up, and having grounds for divorce, brought a suit. The lady did not defend—in fact, having been deserted so long, desired to be free. Decree nisi was granted but before it could be made absolute, the King's Proctor intervened on the ground of the husband's adultery. The husband did not defend and the decree was rescinded.

The position is therefore this, that these two people, separated for ten years, without the possibility of their ever being able to come together again, are bound together for life, whereas the lady, if she were set free, might be legally, respectably and honourably married. In other words it amounts to this as the law stands, that the less reputable the husband, the tighter the wife is bound to him, for had he been unblameable himself the decree would have been made absolute. In the circumstances it was not surprising that the lady comitted herself. The law insists that she shall now do what it has no right to ask of human nature, or to continue to live in adultery, which she is anxious not to do. Anything more conduce to immorality than the law as it exists is hardly conceivable.

I am,
Yours respfly,

Memorandum from . . .

To the President of the Royal Commission on Divorce.

SIR,

I HAVE a worker whose evidence would be worth listening to, she had to leave her husband on a/c of his misconduct, was too poor to get a divorce, got a separation order and maintenance order against him he left the country and she has to try and maintain her two children, she has had an offer of marriage but of course cannot accept it, but it has just come to my knowledge that she is thinking of going to live with the man who offered her marriage, I have however persuaded her not to do so for the present, but there can only be one end to it for the sake of her children; if you care to hear her evidence I will make arrangements for her to come before you as in Lancashire we dont care for opinions we like *facts*.

Yours truly,

MY LORD,

I HAVE now been seperated from my wife 10 years and although there are children I do not think it would be advantageous to live together for many reasons. I may say, she has means and is independent of me.

I do not wish to get married again but the hardship is very terrible, being practically neither married nor single and either debarred from society or compelled to be a Fraud and Liar.

Although no order was afterwards applied for before the magistrate to complete the proceedings, the persecutions I endured I cannot forget.

Would your Lordship's commission wish me to be punished in this cruel way a lifetime, or may it not be more merciful to divorce a Man and Wife who have ceased to live together such a period.

I am, my Lord,
Yours respectfully,

GENTLEMEN,

HAVING read of late so much about divorce I thought I would take the liberty to relate my case to you which is true. Having married about 9 years ago my wife and I lived together for about 5 years but she went into bad ways and we parted and I have never returned. But I was not happy without a partner so I made the aqquance of a young woman she is now twenty-three and I thirty-two she has now three children by me One two years and three months Second one year and two months third three months. My wife has a separation from me with charge of one boy the only one who is now six years old and seven shillings and sixpence per week. My wife is always in good work and the boy gets his dinners from the school he goes to now I am earning on an average of eighteen shillings per week. She has now agreed to take 5*s*. per week, out of 18*s*. per week.

Wife -	5*s*.	per week.
Rent -	4*s*. 6*d*.	do. do.
Insurance -	4*d*.	do. do.
Gas -	6*d*.	do. do.
Coals -	1*s*.	In winter.
	11*s*. 4*d*.	

which leaves me 6*s*. 8*d*. to keep a woman and three children on. Now gentlemen if work is quiet with me and I have to stand off for a week or two and I can't send my wife any money she gets a warrant for my arrest and if I cant pay back arrears I have to go to prison for one month and perhaps more while the woman who is one of the best in the world to me has to starve with her three children and when I come out I have no work. Prison I would not mind only while I was there this poor girl should not be allowed to starve with her three children.

I remain,
Yours obediently.

To Lord Sir Gorrel Barnes.

MY LORD,

MAY I as a working man humbly lay my case before you, which to my mind is one of the worst that it is possible to imagin, I have read with interest the evidence given before your Lordship from day to day as I have good reason for so doing, as it means much to me, my Lord I will now give you the details of my own case, on the . . . 1906 my wife disappeared from her home and all trace of her whereabouts failed, leaving me with 4 children the youngest 6 weeks old, my children I have kept round me since, time went on, and after the lapse of nearly 4 years I accidentally discovered her, to find she was living with another man by whom she had given birth to a child which is now 2 years of age, and to my surprise I found that she had registered the child in my full name, which I have the certificate to prove, well I demanded that she should have it altered, and she made a declaration in the presence of Mr. . . . J.P. to the efect that I was not the father, some time after that, I was persuaded for the sake of my own children to forgive her, at last I did on the conditions that she kept away from the man that had wrecked my home, and she said she would, and do her duty as a wife and mother should, now as a matter of fact she had only been back a week before she visited the man who had broken my home up again, as I will explain I am employed on night work, and as soon as my back was turned she went after this man, then I lost my temper I assaulted her and made an application for a separation, which on the evidencc I produced was granted me with the custody of my children and the wife is at present living with the man that has caused all the trouble and misery, this I think my Lord, is a case where divorce is out of my reach as the law stands have now but if it had been linked to a woman of her description for long.

Hoping, my Lord, you will pardon me writing to you,

I am,
Yours obediently,

Memo. from

re Enquiry Divorce Law, &c.

DEAR SIR,

WILL you try and get this story before the Commission?

Twenty-two years ago I married a woman, who without any apparent cause whatever started drinking and she developed into a disgraceful creature. After having three children, two of which died, I decided that it was wicked and against all ideas of decency to cohabit with her principally for the sake of the offspring, and next to preserve my own sense of decency.

The Hell on Earth soon began, and after submitting to lead the most unnatural life a human being can lead, I came away from her after 14 years' steady efforts to cure her. To-day I am leading a life which is very unsatisfactory, as I have a home where my son and I reside with a lady as housekeeper. Mrs. Grundy has been hard at it for years and there is more misery and annoyance caused through this person than many people imagine. In a provincial town Mrs. Grundy has the power to create quite a lot of misery especially to poor devils in my position.

I never go anywhere except that I am alone, and people don't want me because the false position I am placed in, having a wife alive although she has forfeited all claims to me by her conduct.

If I followed the promptings of nature too much, I should probably bring misery to others, I mean by having several illegitimate children, but I have to set my teeth and suffer. Why?

Because few of the Church dignitaries have tasted such a life, this seems the chief reason. My case can be easily enquired into if you think I am not serious.

Yours faithfully,

To the Hon. Henry Gorell Barnes.

MY LORD,

HAVING seen in the Daily Mail last October a Royal Commission had been appointed to enquire into the present state of the Divorce law I am writing to your Lordship to ask if anything has been done to improve that Law. At present I consider it is most unjust especially to the working man. I have a drunken wife from whom I have been separated five years ago. We had been married about three months when she began drinking, I did all that laid in my

power to induce her to give it up. There was one child of our marriage and I hoped after that was born she would be better, but as soon as she could get out with the child, she was continually in the public-house with it. She ran me into debt and. through her drunken habits I was compelled to give up my business, which has utterly ruined me through having to pay debts incurred by my wife. I endured five years of misery and could no longer bear her drunkenness so I was obliged to get a Deed of Separation Order. Now I have to earn my living the best way I can to support a woman who has blighted my life and prospects, having lost all I had worked hard for to go into business. I know all, I pay to her goes for drink, she is constantly seen in public houses with the child which I think is most disgraceful. I trust there will soon be an alteration in the Divorce Law, as there are many others situated the same as myself, hoping something will be done for their benefit apologizing for the liberty I have taken in making this appeal to your Lordship.

I beg to remain,
Your obedient servant,

My Lord,

Please pardon me for this liberty of writing to you through my unfortunate circumstances. I read with interest the different views of the Commission on separation &c. on which you are now presiding. My position is as follows. Married 17 years at least 12 years of which my wife has been habitually drinking, pawning everything portable even to her own and my underwear to satisfy her craving for drink. Nearly 2 years ago, after an attack of Delirium Tremens she was taken to the Infirmary remaining there about a month, was transferred to an Asylum, she remained there for 12 months, on being discharged came home again, she soon began her drinking habits again and after a few months had the doctor to attend her, he treated her for some weeks and then advised me the Infirmary was the best place she was taken there and again sent from that place to the Asylum where she now remains.

The details of my own case would take too long to state. What can I do in this rotten position? with a very limited income.

Again apologizing for so troubling you,
Believe me my Lord,
Your obediently.

P.S.—Three members of my wife's family have died through the effects of alcohol.

Sir,

As I am very much interested in the divorce problem I am taking the liberty of writing to you on the subject. I do hope that you gentlemen will, see your way clear to get a divorce not for misconduct (only) but for drunkenness and cruelty especially for the working class to be able to sue in the county courts at a fee within the reach of the pockets of the deserving. I am a young married woman who has had to leave her husband after ten years of married life six years of happiness and the remaining four very miserable owning to drink and bad company I worked very hard for four years to try and reform him but he got worse and worse finally I was compelled to leave him as he would not work to maintain me and my only child so I got a sepration from him in . . . police court three years come . . . with a maintenance order against him for five shillings a week for the child only I did not ask for anything for myself as I told the magistrate I had worked to keep him now I would work to keep myself but I cannot get any money from him the . . . magistrates have sent him to prison several times but he does not mind it in the least. I am in a situation at the above address at a wage of 18*l.* a year but I find it a hard struggle to feed and clothe my boy who is 9 years old and to clothe myself and be respectable. I try to make my miserable life happy as far as I can but I find it very hard to live under such sad and trying circumstances.

I sincerely hope under the new act I shall be freed from such a burden my life is blighted not mine only but thousands under the same conditions you may make what use you like of this letter but please do not disclose my name to the public.

I beg to remain,
Gentlemen,
Yours respectfully,

The Secretary,
Royal Divorce Commission.

Sir,

I hope you will pardon my writing and taking up your valuable time, but the subject matter is to my mind very important. The facts are as follows.

In 1896 there was a marriage and more or less since then to 1903 the husband was a drunkard and at the latter date he was locked up and Bail refused on a charge of Rape. He got off and more or less since then to 1908 he was constantly committing adultery but his wife had no direct proof. However in 1908 she found him staying at an hotel with a woman who has given birth to a child and the language the man used to his wife was too awful and horrible. As a result there was a separation order drawn up on . . . 1909 between solicitor and solicitor and of course agreed upon by the concerned parties to the effect that the husband had not to molest his wife, that he had to allow her 2*l.* 10*s.* per week as maintenance and since last . . . he has made no effort towards paying the maintenance. He is living in adultery with the same woman and drinking together and the only way of proceeding to recover the maintenance is through a civil court. The wife wanted a divorce as he was most cruel to her, but the solicitors thought the separation would be better and there it is. I am trustee to the woman and children for an amount invested for their joint behalf and the wife is now told that no divorce would be granted because of the separation order. I do not know whether to expect a reply or not, but I merely draw your attention to the fact that here is a most dreadful hardship on the wife. I hope you will pardon me but the matter is so cruel that I could not help bringing it under your notice.

Yours faithfully,

Sirs,

I wish to let you know the position I am in as regards my marriage. I would have written earlier had I known you would accept letters, from the outside public. My position is this. I was married in 1897 and after a few years my wife commenced to drink heavily which caused greal trouble. In 1902 my wife left me in . . . taking our only child a boy of three years of age with her. Having some property in . . . she went there and sold it for *l.* After 12 months had gone by my mother chanced to hear that the boy was not looked after properly and was neglected on account of his mother's drinking bouts. My mother went to see her and she said she felt greatly relieved for me to have the boy, and since then we have heard nothing of her or where she went to. And it is almost certain women who drink to get drunk are not particular about their morals. I came to seek work in . . . . where I have been engaged this last 7 years and have brought my boy up respectably. Now Sirs I have become acquainted with a good little woman who both care for each other and who will make me a good and true wife and home for me and my boy. If I could be released by law from an alliance which I believe would be allowed under the circumstances. In any other country than England I feel sure if divorce was cheaper and reasonable for men in my position then men would be able to marry women whom at the present time are willing to live with them as their unlawful wife. So Sirs I hope and trust to see you advise an alteration that will enable working men by cheaper divorce be able to live their lives happily and morally.

Yours respectfully,

To My Lord Gorrell,

My Lord,

Forgive my trespassing on your valuable time but learning through the press your kind interest in the Royal Commission on the Divorce Laws, I venture to state my case. I am a working man and have been in the one employ for thirty years I am now 47 years

of age I married when 20, shortly afterwards my wife developed a grate taste for drink and gradually got worse I need not go into the misery which I suffered, sufficient is she became an habitual drunkard and was taken away three years ago, she is still in the Asylum the Medical Superintendent tells me she is an hopeless case. Now my position is this, I have meet someon whom I care for very much and they me. We both come of decent family and we cannot be together because the law of England forbids, so what are we to do it is spoiling her life and mine and I have no domestic comfort whatever so you may imagine with what interest we are awaiting the issue of the Commission. Agin My Lord apolergising for presuming on your most valuable time and also wishing you and your colleagues every success in your good work.

I beg to remain my Lord,
Your obedient servant,

P.S.—Should be pleased to furnish you with all details in confidence.

To the President of
The Royal Commission on Divorce.

DEAR SIR,

I DO not know if I am breaking rules in addressing you, discourtesy is the last of my thoughts, but I feel I must write and speak of the misery that the poor are forced to bear through the cursed marriage laws of England. In my own case, I married a woman who proved a drunkard, and after a short time I was forced to leave her and my home for my life had become unbearable, since then my wife has had delirium tremens and been confined in the County Lunatic Asylum for nine months. She is now discharged and from all I hear is still drinking and worse I believe, and the law says that I am legally married. I could never make a home with her again. What a mockery of the word "wedded" marriage, I take it, should be founded on happiness and goodness, on affection and respect. Oh if your Commission only understood what a bitter thing it is to be forcibly tied and compelled to own one who has ceased to be a wife, and drained each week of a large portion of my earnings to cotribute to the support of a wife who has forfeited all love and regard. And I am not alone in my unfortunate position, I meet many women and men who from a variety of causes, are compelled to live a single life although married, and they would hail with delight and bless the day that means were provided to give them freedom.

May your Commission be the lever to pass some good law on this important question and apologising for writing to you.

I remain,
Yours faithfully,

MY LORD,

I BEG respectfully to be permitted to endorse what has been so plainly addressed to the Evening Standard as per cutting enclosed which I ask for your kind perusal, and, pray that you will do the writer the privilege of your consideration when analysing the pros and cons of the present enquiry over which you have the honour to preside.

I also beg to take the liberty of briefly stating my personal experience, was married at 21 against parents desire, wife commenced sly drinking, home and children neglected, wedding ring and other articles pawned to satisfy the hungry craving, two children died due to inattention and want of common sense, was anxious to avoid exposure or would have acted on doctor's suggestion, eventually was compelled to publicly stop all credit, and, to avoid injury to my children was absolutely compelled to supply her with gin, and things went from bad to worse, which resulted in her going away to subsequently return. Later she again left owing to my taking severe measures and my father took my 2 babes 2 years and 5 years respectively and had my goods warehoused. Some 8 years later I was implored to take her back believing she had gained commonsense and given up drink, and, to my deep regret I acceded, and myself and 2 children suffered, as no tongue can tell, with further exposure and unmitigated lies, whilst holding a public position in a country village. After 8 months she again left and I am still married and not married. I declined in both instances to allow her maintenance (and in consequence had to seek protection) until she took a summons, my object, to enable me to state my case to a magistrate, and, although I had a medical gentleman, solicitor and others the presiding magistrate declined to hear their evidence, but, simply enquired "are you prepared to take your wife back" resulting in my being compelled by law to support a worthless woman for the past 15 years. I venture to say Sir that reconciliations prove a life of torture, early marriages should be prohibited, bastardy cases subject to imprisonment on both sides, and last but not least, that separation orders after 5 years should be sufficient to have the effect of a decree being absolute for the dissolution of a marriage and that no maintenance be allowed provided the woman is able to work.

I fear Sir my case is only one of many thousands and pray for your kind indulgence.

Apologising for the liberty taken,
I remain, my Lord,
Your obedient servant,

Lord Gorell Barnes,
Chairman Divorce Laws.

To
the Chairman.

SIR,

In writing to you and stating may case it is to show how hard the present divorce laws are regarding the working classes.

I was married in 1896 and soon after my first child was born in 1897 my wife went on the drink, she gradually went from bad to worse, got locked up two or three times and after selling up my home, eloped with a man named . . . and went off to Canada leaving me with three little children.

Now I have been in my present situation 16 years but owing to the expense of providing for my children it is impossible for me to save sufficient money to get a divorce, and am compelled to lead a lonely life, through no fault of my own.

Trusting you will be able to recommend some means to give us working classes a chance, as well as the rich

I remain, Sir,
Your obedient servant,

Memorandum from . . .

To the Hon. Gorell Barnes,
Sec. of the Royal Commission on Divorce,

SIR,

IN stating the facts of my case again before that should you require me as a witness to give evidence I should be pleased to do so. The true facts of my case are, that, almost, seven years ago, I was compelled, to leave my wife, owing to her terrible drunken habits, neglect and cruelty to the children and myself, I might here state that through those habits I lost two dear children. However I was summoned for desertion, and a separation Order granted. I to have the custody of the children allowing her the smallest grant, I understood they could make viz. 2*s*. 6*d*. per week. I might also tell you Sir that Dr. . . . of this town handed a letter to the Justices, describing the shocking condition he used to find her when called to see the children when very ill. I have strove hard for my two dear boys in humble lodgings and I believe it is only those who are placed like myself, know the need of a reform in our laws. I do pray Sir that your Commission will recommend in cases like mine, that after three years or five there should be absolute Divorce which I am sure would bestow a Gods blessing on vast numbers. although Sir I have been informed by the Police of my wife doings with men it is almost impossible to prove adultery for fear of losing the maintenance money, and being so shrewd make it very difficult to obtain witnesses. My age Sir is forty two years and my sons 16 and 13 respectfully I do trust Sir that this statement will bear good fruit and so enable those who are placed like myself to have another beginning in life and to look forward to having

home comforts for the children for I am sorry to say it is a hard life is mine, and Boys.

I am Sir,
Yours obediently.

Re the Royal Commission on Divorce.
The Secretary.

DEAR SIR,

I HAVE followed the sittings and evidence of the above with great interest as I am one who will be affected by their decision. Mine is a typical case of several I know personally. A few years after being married, when I had 4 children I found my wife was giving way to drink to such an extent that I was compelled to obtain a separation. After about 9 months I allowed her to return on her promise both verbally and by letter that she had given it up and would never touch drink again. I am sorry to say that in less than two weeks she was drunk again. This went on so bad that she was locked up several times. Her language to the children was simply disgusting, she would pawn anything for drink and from first to last cost me hundreds of pounds. I at last went to the court and got a legal separation from her on the grounds of an habitual drunkard; allowing her 15*s.* per week. I have not seen her now for nine years, she being in another town.

My children are getting older and two of them will shortly be leaving. According to the present law I must either live a celibate life or live with a drunken wife, the latter I will never do. If the law cannot help me then I shall be compelled to make my own law. You may use this but omit the name for the children's sake.

Yours faithfully,

It is all very well for the persons and those people who says "try and persuade them to give up the drink" only those who wear the boots know where and how they pinch. I hope and trust the Commission will give relief to persons in my position as well as for unfaithfulness. I have only given you the fringe of what a man (and his children) has to go through with a drunken wife.

To the Royal Commission on the Divorce Laws.

GENTLEMEN,

I HAVE read with great interest the evidence given on the divorce laws. I hope I am not intruding but beg to state my case as follows.

I am a married man with 6 children, soon after marriage on returning from work each day, I found my wife more or less intoxicated. The excuse being each time bad bilious attacks. On several occasions I called in a medical man, and after a time he informed me it was only drunkenness, my suspicions were then confirmed. That was my first insight of 14 years of misery to follow. I have given my wife a comfortable allowance each week (including all holidays) for housekeeping, but found it all went in drink, even the children's clothes, her own, and mine, she pawned for drink, even the bed clothes, left nothing but the mattress for all to lie on in all conditions of weather. The children were kept dirty and neglected and have often had to stay at home because their boots were in pawn, the excuse to the school teacher—the children are not well. I also know people that could prove that my wife has committed misconduct, but are afraid of causing trouble in their own families. I did not want my wife to be a total abstainer and allowed her 4 quarts of ale or stout per week, but this was not sufficient. I have found as many as 30 40 and 50 pawn tickets at a time for various articles of mine pledged by my wife or associate.

She would when under the influence of drink openly insult me in the street. I have tried hundreds of times to get her to alter or improve her ways, the retort always being a lot of filthy language and—you have married me I shall do what I like and the law cannot prevent me. The life she led me so injured my health that I had to have medical attendance. It has taken all my savings 200*l.* in 8 years to pay debts and redeem pledges.

Since the children's act was passed, and with the assistance of Inspector . . . P.S.C.C. of . . . and solicitors, I obtained a separation and allow my wife 10*s.* per week, and from what I can learn she is still as bad as ever. Mr. . . . has a full list taken from a diary I have kept. I may mention that most Reverend Gentlemen only see the woman (of this kind) in her best, usually pleading poverty and charity to hide their shame. Pen cannot describe my sufferings, and my means will not allow me to divorce her. I earnestly trust something will be done to enable the working man to rid himself of a burden so intolerable and loathsome as a drunken wife.

I hope I am not encroaching too much on your valuable time, you are at liberty to publish this letter if you so desire.

I remain, dear Sirs,

YOUR LORDSHIP,

I AM taking the liberty of writing you to ask you if you could let me know if I am a free woman, as I am leaving for South Africa next Saturday . . . and should like to know before I go.

On . . . 1893 I had to get a separation from my husband on the grounds of persistent cruelty, since then I have not seen him, or has he sent me one penny to help to keep his two little girls. I have had nothing but what I have earned myself and for the last six months I have had a nervous breakdown, and been unable to work, and I think if I get to South Africa where I have friends I may be better.

If I meet someone who would act as a father to my children can I get married?

I am sorry to trouble you, but I cannot afford to go to a solicitor.

Thanking you in anticipation,
Yours obediently,

To the Right Hon. Lord Gorell.

MY LORD,

I PRAY your Lordship will bear with your humble servant in regard to cheaper divorce facilities for the poorer classes.

In the matter of my own case, my lawful wife is suffering (sad to say) from that dreadful and deadly disease known to medical men Syphlus, and that in an advanced stage, that her visage is depleted of one of its organs. Now when the doctor that attended my wife knew her condition, he sent for me and warned me not to have further sexual intercourse with my wife, so after some delay I managed to get the guardians to grant her an order for the infirmary for 3 months, during which time my wife was greatly relieved but not cured, so that I was still in danger of catching the disease if I lived with my wife, so I parted from her 2½ years ago, but I had not the funds to pay expence, and was also afraid that publicity would prejudice my career so I took to myself a natural wife because I could not live with my lawful wife, I may be to blame for doing this but to my mind it was better than ruining young girls or forging links in the chains of prostitutes.

I have the honour, My Lord, to remain,
Your humble servant,

To Lord Gorrel Barnes.

MOST RESPECTED SIR,

PLEASE allow me to thank you for the position you have taken up with regard to Poor Mans Divorce, and to shew you how hard the present Law is.

For Sixteen years I have been married and my wife had two children (Boys).

Towards the latter part of the time she became fascinated with a younger man, with the result adultery and the breaking up of my Childrens Home. They like me have suffered but the man has not though he knew her to be married. To-day and for the last 3 years since I have been striving to obtain money to take action under Forma Pauperis, but fate seems to treat me hard as I have to work hard and can only find enough to nearly pay my way without incurring this further expense.

The stamp duties are too much for me more less the luxury of a Solicitor and Council, and the consequence is I am as far away as ever.

The Laws of Nature I am denied and also am debarred from asking any respectable womans hand

in marriage. People know I am seeking Divorce and through this present day Law I must keep on suffering and through no fault of my own. My children are doing likewise and so the punishment still goes on.

An Englishmans Home is supposed to be his Castle, yet he cannot prevent his chief asset from being stolen.

Yet were a man to enter a shop and steal the most commonest article therein he could get 6 months. My opinion Sir is that a man who knows a woman to be married should, did they commit adultery, be treated the same as any common thief, and the injured one be freed by a stipendary or bench of magistrates. Hoping you will persevere with your good work

I am, Sir,

Yours affectionately,

Please do not consider this private.

HON. SIR,

I WAS married at the age of 18 and for a few years lived fairly happy with my husband (and two children). Never a teetotaler he took to drinking more than was good for him, got into the society of violent men and bad women, and thro his orgies my life and that of my children was perpetually endangered by the throwing of lighted lamps and knives and whatever came to hand, often myself and children had to seek a shelter in the middle of the night from his violence. Eventually I went to a solicitor who wrote him a letter of warning, which he answered, with a promise of better behaviour for the future. After a short time he broke out worse than ever, and I was forced to do what I always dreaded, take out a public summons, result a separation with maintenance which he payed for about five weeks.

My son and daughter are both married and I am still working and keeping myself altho my health is indifferent. Had I been free the chance of a happy home was assured, but through lack of means I have been unable to procure a divorce.

I remain,

Your Lordship to command,

The Hon. H. Gorell Barnes.

TO LADY FRANCES BALFOUR,

I HOPE they will alter the law as regards divorces so as a person of limited means will be able to get a divorce. My case is this I was married in 1879 and there are five children of the marriage and no man ever loved a wife and children more than I did mine business called me away from home for a few weeks in 1887 and when I come home my wife I found was living with another man sanctioned by her own father and mother and as had a family by him and still lives with him in open adultry (if you like I would come to London to see you when the Commission are sitting) she forbid my children to speak to me and she has not spoken to me since and my eldest daughter I do not know I have heard she is married and lives in . . . you are at liberty to publish this letter if you like.

Yours respectfully,

P.S.—I hope your Ladyship will not mind my writing to you as I think mine is a very hard case being tied to a woman like that.

SIR,

SEEING by the papers that a royal commission has been formed to enable the poorer classes of obtaining a divorce, I wish to state my case briefly.

I am a married woman, and at the present time am getting my living as a tailoress and wish to obtain a divorce from my husband whom I married in 1896 and left in 1907 through intimacy with other women there is one child of the marriage.

I shall esteem it a great favour if you would let me know how I could obtain the divorce as I have no means of doing so through the high courts.

DEAR SIR,

I BEG to lay before you my case.

My age is 23, I was married 16. In two months my husband treated me in a most brutal manner without any provocation. I lived with him five years and one little daughter was born.

Owing to the constant ill-treatment, I got a separation order and costs granted . . . a year ago, but which I had to pay, as my husband pleaded poverty, although his father has an income from 3,000*l.* to 4,000*l.* a year, and my husband is an only son and entirely dependent on his father.

I have proof of my husband's misconduct but the Divorce decrees being so expensive, I cannot obtain one, so my young life is blighted, and no future in store for me unless, Divorce proceedings become cheaper. There must be very many similar cases to mine in this world.

I remain,

Yrs. most humbly,

SIR,

SEEING an account of "Cheap Divorce" in the "Daily Mail" I beg to put my case before you. After being married 10 years, I took in a man lodger, who completely wreacked my home. He showed a great liking for my wife and when I spoke about it, she said she would rather I went than he. I then left the house, and she left with this man and all my furniture. I got a legal separation drawn up, and since then have not spoken. She has now taken my three children away from me and has got 4 illegitimate ones besides.

Will you kindly tell me the particulars and how to arrange the Divorce, and the cost, as I am only a working gardener earning 1*l.* a week.

I am, Sir,

Your's respectfully,

DEAR SIR,

MIGHT I be allowed as one of the members of the poorer class to say with what pleasure I hear that a Royal Commission of Enquiry has been appointed to consider the law of divorce and its relation and administration, in regards to the working class, who cannot proceed solely on account of finance, let me briefly illustrate to you the injustice of the present law as regards to myself, for this last eighteen years. The woman that I married, was a slave to the drink, more a creature of pity perhaps, than for condemnation, gradually and eventually, became hopeless, and whilst under its influence, did almost anything and went from bad to worse, and I was absolutely compelled to leave her and after allowing her upon a maintenance order the sum of 8*s.* a week, for some little time, I discovered that she was living a life of immorality with other men, my case was taken into the . . . Police Court and upon me producing more than ample evidence of her immorality, the Order was rescinded, and allthough she is no longer my wife *morally*, the law still says that she is my wife legally until I get a divorce from her, and this I have not been able to do on account of finance, being too poor therefore not being able to proceed, otherwise I like many others, might have been living a happy pure and contented life, this injustice I have felt most keenly at times, and should the outcome of this commission rectify this lamentable state of things I for one shall be most pleased and gratefull, and should any further information be required of me I should only be too willing to give same. should you deem my case sufficiently worthy of a reply, I have enclosed a stamped addressed envelope for same. Believe me to Remain your Obedient Servant

DEAR SIR,

I SEE by the press, that a Royal Commission has been appointed, re Divorce for the poor, and about time too! for as the law stands at present Divorce is simply a luxury for the rich, and it furnishes the justification of saying, there is one law for the rich and another for the poor.

For instance, I will give you my own case—my wife left my home and protection some months ago, now, she is leading the life of a prostitute, as a matter of fact, during the past summer months she followed that calling at . . . , she could be seen with different men daily, yet I am forced because I do not possess the means—to have a woman, bearing my name, I am forced to put up with this month in month out, to be pointed out as one whose wife is a Prostitute! had I been a rich man, I could get rid of such a creature, but as I

am poor, well, I've got to grin and put up with it. Let us hope the time is not far off when Divorce will be within the reach of all, and that £. s. d. will not bar the door—to-day the homes of the poor are wrecked by infidelity as much as compared with the homes of the well-to-do, but the rich have a remedy, the poor none, perhaps soon, justice from this point of view, as far as Divorce is concerned, will be denied to none.

I am, Sir,
Yours truly,

DEAR SIR,

AFTER reading the Correspondence Re "Cheap Divorce," I thought my case would perhaps interest you. In the first place I am a young man 25 years of age and up to 5 months ago I hadn't seen my wife for 4 years. Then I receive a letter from a man in . . . asking me to petition for a Divorce on the grounds of Adultery saying, I shall have no difficulty in doing so, as she (my wife) is expecting a child. After making enquiries I find that they have been living together as man and wife for about 3 months and since then I know, in fact I can prove, that she (my wife) has given birth to a still born child. You will now see the position I am placed in. I havn't means to apply for a Divorce, not being able to meet the expense and I don't think it possible to get my expenses from him (Co-respondent). There is no doubt left, that had I been a rich man I could have procured a Divorce at once, but seeing that I am not, then I must live a solitary life or, under false pretences (which I don't intend to). I hope you will excuse me taking this liberty and if you feel at all interested in my Case I could on demand send you further particulars, also letters bearing on my character. I think you will gather that in my case "Cheap Divorce" would mean a great deal to me. Again apologizing for any trouble I may have given you.

From Yours Truly,

YOUR LORDSHIP,

I HOPE you will excuse my liberty in writing to you but I felt I could not refrain from doing so after reading your motion to bring facilities for divorce within the reach of a poor and deserving person of which I think I am as regards jurisdiction about 7½ years ago I preyed for a Divorce from my wife in India . . . . on the ground of desertion and adultery which cost me the whole of my savings which I withdrew from the Savings Bank only to learn afterwards that my case was dismissed. I then came home from India as I could not soldier there it preyed on my mind so much after being home from India 12 months and receiving letters from her of a condolling character I resolved to bring her home thinking she might reform and through . . . I got her a passage Home. she went on all right for a few years till I left the service some few years when she repeated her conduct and the result was a child which I disclaim then she became the same as ever pawning and selling my Home gradually till I was compelled to leave her and now my Lord I cannot possibly pay for a second Divorce and am leading a life of lonliness. I think it very hard that I could not have been judged fairer than this. I paid a detective all I could afford thinking I could get a paupers Divorce but he wanted more than I could afford so that fell through I have got ample proof at present for a second petition but I have not got the money to do it with I am a Labourer employed . . . earning 22s. per week and got a small pension. So hoping my Lord you will take my extenuating circumstances into consideration, and give me a little advice on the subject.

I am,
Your Lordship,
Your obedient Servant,

To the Royal Commission on the Divorce Laws.

GENTLEMEN

MIGHT I give you the the following facts as a reason why Cases should be heard in tows in which people reside in 1907 I "Personally" made application to the Court throught my Solicitor for Divorce the Case went on for about 2 years Costing me 200*l.* then it had to be entered under another Court result had to drop it for want of money. 10 years after (Now) having to live an unnatural life for the above reason.

DEAR SIR

Re cheaper Divorce.

6 years ago I broke my leg playing football, my wife left me saying it served me right, she went with another man, had a child, how could I forgive,

I am a Working man and do not average 1*l.* per week, so it is impossible to obtain a divorce, hoping this will receive attention.

Yours Truly,

DEAR SIR

I SEND these few lines to congradulate on your undertaking to get a cheaper divorce which I do think is much needed for the poorer class my wife has been living with another man for about 12 years and got children by him and I am not allowed to do anything because I have not money enought

Yours Fraternally,

To The President of the
Divorce Commission.

Re Poor Man's Divorce.

DEAR SIR,

I TAKE the liberties of writing your Commission giving a true statement of my situation in reference to Myself and Wife.

We have been married 15 years, but she left me 5 years ago, I had reasons to believe that she was unfaithful at that time and sought Legal advice and I wished him to get me Divorced. My Wife hearing later that I had sought Legal advice as taken upon herself to write to my Solicitor making a full confession of her Misconduct on several occasions, and wished him to tell me that it was not with the one whom I thought it to be. Both our afidifits have been signed and I have engaged Council opinion. I have paid altogether 10*l.* I have been anxiously waiting an hearing. But my Solicitors now tell me that there must be more evidence before they can proceed. Having furnished them with all the evidence that is possible for me to give I cannot say any more to help them. Therefore I am anxious that your Commission should hear my story. I am only a working man and cannot afford to pay for Divorce in the ordinary way.

Hoping still that something can be done on my behalf

I am, Gentlemen,
Yours obediently,

SIR,

FROM condensed reports in the newspapers of the proceedings of the Royal Commission on Divorce, I understand that communications have been received from "silent witnesses," and, as I consider myself a "victim" of our present marriage law, I trust this letter will be laid before the Commissioners.

I hold the opinion that divorce should be made cheaper. My wife became a chronic inebriate and I was reluctantly compelled to obtain a separation order under the 1902 Act, an Act which gave relief where previously I had none.

From experience, separation is unsatisfactory. With one-fourth of wages gone in allowance, a family to care for, and being a sort of "odd man" in social gatherings, for an *uncertain* time, a man's life is a blank, try how he will to occupy his time. This, of course, entirely apart from the experience of the other side.

Five years ago I took legal advice, and was informed I had good grounds for Divorce, owing to having proofs of wife's infidelity; but the cost, 26*l.*! That means, at least 30*l.*, which places Divorce entirely out of my reach. Why should not the law be made for the poorer classes as well as the richer class?

Hoping, Sir, the result of this Commission will be that Divorce will be made easy, not necessarily for trifles, but, at any rate, within the reach of such as

Your obedient servant,

DEAR SIR,

As your Commission has been started to enquire into the subject of Divorce and the conditions which lead to such a step. I think it is my duty, apart from

any personal considerations to write and state my own case for your information in the fervent hope that future legislation will perhaps afford me a means of escape from my awful predicament. I am married to a woman who is internally deformed and which I did not discover until after marriage. I was put into communication with a firm of London lawyers by a weekly newspaper and they informed me that they had never in their long experience ever heard of such a case as this and that the law had never been framed to meet such a condition of affairs. They said I could enter divorce proceedings and no doubt obtain a nullity of the marriage but such a course would cost 40*l.* to 60*l.* Of course this to me is hopeless because my average earnings do not exceed 25*s.* to 27*s.* per week. I do not care to entrust to a letter, addressed as this is, minute details, but if you care to communicate with me and give me your name and address I will go more fully into the matter and give you the name of the medical man who thoroughly examined my wife, and also a description of how and to what extent she is deformed. Externally she is practically the same as the usual type of woman, internally her sexual organs are sealed and withered. At present I am forced to live an unjust and strictly speaking dishonourable life. Can you assist me. I am eagerly awaiting your reply.

Faithfully yours,

My Lord,
Ladies & Gentlemen,

I SHOULD like to draw Attention to the Committee enquiering into whether Divorce should be Cheaper for the Working Class. I have just got a divorce myself and as a Working Man my evidence is sound Common Sence. not prejudice by Religious Instruction. I know a good few around about where I live that as not money enough for a divorce Result they are both going about with anyone they fancy. and always quarreling like Dog and Cat. the Children hearing them on almost every occasion. that is the no cheaper divorce result. some are living with other men and men with other women bringing children into the world Result children shamed for life throught no fault of their own because father or Mother could not get a divorce. I know one friend a good young Man. Total abstainer Wife drinks and bothers with another man. This young man cannot get money for a divorce Result he as being brought up in the police court for Assaulting this other man on several occasions his wife stabbed him a few weeks since and he was fined in the . . . Police Court still he as no chance of Divorce she as been out all night about 20 times this year at least. and the man is a good honest, steady young man still he is compelled to live with a Swine like that. Take my case I got damages, custody of my Boy but I cannot get a penny, my case started in 1909. Case come up in 1910 then I have 6 months before I am free altogether. 1 year and 4 months althought I win the case I must be 6 months before free I think this requires reducing. Remember there was no defence at that. if There had been I should have been compelled to pay her expences which is outrageous from a Working man. especially when all the wrong is on the woman's part I think the Committee might give the Points a Concideration as they are from one who as suffered throught the expences being so great. Of course there are two sides to the question of divorce.

I remain yours, Truely,

DEAR SIR,

I beg to address you with reference to my case which has occurred during the past month, as an illustration of the necessity of cheaping the cost in divorce.

A few months back my suspicions were aroused as to my wife's conduct in my absence, I may state here, I am a commercial traveller (always home for the week ends), and when I finally brought the matter to a head, she left me . . . with the man, whom she owned to have been carrying on with for over 12 months, and is now living with him in furnished apartments, it is the usual thing a friend of the family. Of course there are a lot of details that are not necessary to enter into here.

If it were a matter of a few pounds (say 10*l.*) I would bring a suit against them, but at present I am out of employment caused through this trouble, so cannot think of it. The suit would be entirely undefended on their part, as there is not a question of cruelty or adultery against me during the time I have been married to my wife, just within 7 years.

I should be obliged if you would bring this before the Commission, and should you wish to hear any further particulars, I should be pleased to give them.

Yours obediently,

SIR,

As one directly affected, I most earnestly trust that the Commission may cause divorce to be cheaper, my case is as follows, married 2 years, no children, wife deserted after disgraceful behaviour, heard nothing 6 months, wife eventually brought action for restitution of conjugal rights, I with ample evidence brought cross petition for divorce, co-respondent a wealthy man, . . . employed very expensive Counsel who spun out case 5 days, I compelled to withdraw having no means to continue, have never earned more than 3*l.* a week as a pianoforte tuner, now earn (30*s.*) my own costs were 630*l.*, fancy that for a man in my position, all my savings of a lifetime are gone.

I believe in this country over 100,000 couples are living apart, imagine the misery being tied to a person that they will never live with again, if the commission give relief, it will mean happiness to above number, fancy to about as many people who formed the queue in one day to see the late King Edward lying in state from 6 in the morning till 10 at night.

Yours respectfully,

APPENDIX XXVII.

"THE MODEL LAW"—AN ACT REGULATING ANNULMENT OF MARRIAGE AND DIVORCE—EXTRACTED FROM UNITED STATES CENSUS REPORT—MARRIAGE AND DIVORCE, 1867–1906 (p. 272).

Proposed uniform divorce law.—The form of Bill as recommended by the congress on uniform divorce laws is as follows:

AN ACT REGULATING ANNULMENT OF MARRIAGE AND DIVORCE.

CHAPTER I.—JURISDICTIONAL PROVISIONS.

Article I.—Annulment of marriage.

SECTION 1. Causes for annulment.

A marriage may be annulled for any of the following causes existing at the time of the marriage:

(*a*) Incurable physical impotency, or incapacity for copulation, at the suit of either party: Provided, That the party making the application was ignorant of such impotency or incapacity at the time of the marriage.

(*b*) Consanguinity or affinity according to the table of degrees established by law, at the suit of either party; but when any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party.

(*c*) When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

(*d*) Fraud, force, or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.

(*e*) Insanity of either party, at the suit of the other, or at the suit of the committee of the lunatic, or of the lunatic on regaining reason, unless such lunatic, after regaining reason, has confirmed the marriage: Provided, That where the party compos mentis is the applicant, such party shall have been ignorant of the other's insanity at the time of the marriage, and shall not have confirmed it subsequent to the lunatic's regaining reason.

(*f*) At the suit of the wife when she was under the age of 16 years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age.

(*g*) At the suit of the husband when he was under the age of 18 at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.

Article II.—Divorce.

SECTION 2. Kinds of.

Divorce shall be of two kinds:

(*a*) Divorce from the bonds of matrimony, or divorce *a vinculo matrimonii.*

(*b*) Divorce from bed and board, or divorce *a mensa et thoro.*

Article III.—Divorce a vinculo.

SECTION 3. Causes for.

The causes for divorce from the bonds of matrimony shall be:

(*a*) Adultery.

(*b*) Bigamy, at the suit of the innocent and injured party to the first marriage.

(*c*) Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, for at least one year: Provided, That such conviction has been the result of trial in some one of the states of the United States, or in a Federal court, or in some one of the territories, possessions, or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

(*d*) Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe.

(*e*) Wilful desertion for two years.

(*f*) Habitual drunkenness for two years.

Article IV.—Divorce a mensa.

SECTION 4. Causes for.

The causes for divorce from bed and board shall be:

(*a*) Adultery.

(*b*) Bigamy, at the suit of the innocent and injured party to the first marriage.

(*c*) Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, for at least one year: Provided, That such conviction has been the result of trial in some one of the states of the United States, or in a Federal court, or in some one of the territories, possessions, or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

(*d*) Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe; or such indignities, threats, or acts of abuse, as to render the condition of the other party intolerable and life burdensome, and to force such party to separate from the other and to live apart.

(*e*) Wilful desertion for two years.

(*f*) Habitual drunkenness for two years

(*g*) Hopeless insanity of the husband.

Article V.—Bars to relief.

SECTION 5. When decree shall be denied.

No decree for divorce shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offence charged, or has condoned it, or has been guilty of adultery not condoned.

Article VI.—Jurisdiction.

SECTION 6. In what courts.

The * * * court of this state shall have and entertain jurisdiction of all actions for annulment of marriage, or for divorce.

SECTION 7. By personal service in actions for annulment.

For purposes of annulment of marriage, jurisdiction may be acquired by personal service upon the defendant within this state when either party is a bona fide resident of this state at the time of the commencement of the action.

SECTION 8. By personal service in actions for divorce.

For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by personal service upon the defendant within this state, under the following conditions:

(*a*) When, at the time the cause of action arose, either party was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a bona fide resident of the state.

(*b*) When, since the cause of action arose, either party has become, and for at least two years next preceding the commencement of the action has continued to be, a bona fide resident of this state: Provided, The cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

SECTION 9. By publication in actions for annulment.

When the defendant can not be served personally within this state and when at the time of the commencement of the action the plaintiff is a bona fide resident of this state, jurisdiction for the purpose of annulment of marriage may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this state, or by additional substituted service upon the defendant within this state, as prescribed by law.

SECTION 10. By publication in actions for divorce.

When the defendant can not be served personally within this state and when at the time of the commencement of the action the plaintiff is a bona fide resident of this state, jurisdiction for the purpose of divorce, whether absolute or from bed and board, may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this state, or by additional substituted service upon the defendant within this state as prescribed by law, under the following conditions:

(*a*) When, at the time the cause of action arose, the plaintiff was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless the plaintiff has been for the two years next preceding the commencement of the action a bona fide resident of this state.

(*b*) When, since the cause of action arose, the plaintiff has become, and for at least two years next preceding the commencement of the action has continued to be, a bona fide resident of this state: Provided, The cause

of action alleged was recognized in the jurisdiction in which the plaintiff resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

SECTION 11. *Particeps criminis* may be made a party.

Any one charged as a *particeps criminis* shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

SECTION 12. Hearings.

All hearings and trials shall be had before the court, and not before a master, referee, or any other delegated representative; and shall in all cases be public.

SECTION 13. Attorney, appointment of by court.

In all uncontested cases, and in any other case where the court may deem it necessary or proper, a disinterested attorney may be assigned by the court actively to defend the case.

Article VIII.—Evidence.

SECTION 14. Proof required.

No decree for annulment of marriage, or for divorce, shall be granted unless the cause is shown by affirmative proof aside from any admission on the part of the defendant.

SECTION 15. Impounding of record and evidence.

No record or evidence in any case shall be impounded, or access thereto refused.

Article IX.—Decrees.

SECTION 16. Rule for decree *nisi*.

If after hearing of any cause, or after a jury trial resulting in a verdict for the plaintiff, the court shall be of opinion that the plaintiff is entitled to a decree annulling the marriage, or to a decree for divorce from the bonds of matrimony, a decree *nisi* shall be entered.

SECTION 17. Final decrees, entry of.

A decree *nisi* shall become absolute after the expiration of one year from the entry thereof, unless appealed from or proceedings for review are pending, or the court before the expiration of said period for sufficient cause, upon its own motion, or upon the application of any party, whether interested or not, otherwise orders; and at the expiration of one year such final and absolute decree shall then be entered, upon application to the court by the plaintiff, unless prior to that time cause be shown to the contrary.

SECTION 18. Decree *a mensa*, terms of.

In all cases of divorce from bed and board for any of the causes specified in section 4 of this act, the court may decree a separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree; and upon such application the court shall make such order as may be just and reasonable.

SECTION 19. Former name of wife.

The court upon granting a divorce from the bonds of matrimony to a woman may allow her to resume her maiden name, or the name of a former deceased husband.

CHAPTER III.—GENERAL PROVISIONS.

Article XI.—Children.

SECTION 20. Legitimacy of.

(*a*) In an action brought by the wife, the legitimacy of any child born or begotten before the commencement of the action shall not be affected.

(*b*) In an action brought by the husband, the legitimacy of any child born or begotten before the commission of the offence charged shall not be affected; but the legitimacy of any other child of the wife may be determined as one of the issues of the action. All children begotten before the commencement of the action shall be presumed to be legitimate.

Article XII.—Foreign Decrees.

SECTION 21. Effect of.

Full faith and credit shall be given in all the courts of this state to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another state, territory, or possession of the United States when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 7, 8, 9, and 10 of this act. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce by a court of a foreign country as may be justified by the rules of international comity: Provided, That if any inhabitant of this state shall go into another state, territory, or country in order to obtain a decree of divorce for a cause which occurred while the parties reside in this state, or for a cause which is not ground for divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state.

Article XIII.—Repeals.

SECTION 22. Repealing clause.

The following acts of assembly and parts of acts, viz.: * * * and all other acts and parts of acts of assembly of this state, general, special, or local, inconsistent with this act, be and the same are hereby repealed: Provided, That nothing in this act contained shall affect or apply to any actions of annulment of marriage, or for divorce, now pending.

SECTION 23. When act shall take effect.

This act shall take effect on the day of A.D. .

APPENDIX XXVIII.

NAMES OF WOMEN AFTER DIVORCE.

The question as to the name to be held by a woman whose marriage has been ended by divorce is one that is not covered by the terms of reference of this Royal Commission, but in view of the correspondence that has been addressed to the Commissioners on the subject, and the fact that the general law as to the use of names varies in different countries, it has been thought desirable to furnish some information on the subject.

A brief reference to the historical development of the use of names in marriage and generally may to some extent explain modern variations in practice in different countries. The taking of the husband's name by the wife on marriage appears to spring from the earliest Roman practice. Originally in Rome a woman bore the name of the head of the family to which she belonged. Consequently, if she passed out of the *manus* of the father into the *manus* of the husband she lost her father's name, and as a member of her husband's family acquired her husband's name. Thus we have Caecilia (filia) Metelli; Metella Crassi (uxor). Later it became the practice to indicate a daughter as distinguished from a wife by adding the letter (f) after the name of the daughter. Mr. H. E. P. Platt, Fellow of Lincoln College, Oxford, who has considered the question of the names of married women in Roman practice (in contrast to Roman law) for the present writer, doubts if there is any evidence that when a wife passed *in manum viri* she took her husband's gentile name. In the age of the kings, Lucretia is described as remaining Lucretia after marrying L. Tarquinius Collatinus and, not many years later, the wife of Cn. Marcius Coriolanus is not called Marcia, but Volumnia, and his mother is

Veturia (Livy ii, 40). It is possible, however, in these cases that *manus* never arose. Again, C. Julius Caesar was designated (*designatus*) *Flamen Dialis* when he married Cornelia. He must have married her by *confarreatio* and so acquired *manus*, and yet she remained Cornelia by name (see *Suetonius*, Jul. 1). Again, a Flamen Dialis must have been the son of a *confarreate* marriage, yet Cæsar's mother was called Aurelia. It should be noticed that expressions such as *Metella Crassi* occur only in a few instances (Madvig's *Grammar*). Gildersleeve and Lodge, in their *Grammar*, say, "The Family Genitive, as Hasdrubal Gisgonis " (Livy xxvi. 20 and elsewhere), Hectoris Andromache " (Aeneid iii. 319), is found twice only in Cicero: " otherwise it is poetical and post-Ciceronian. *Servus*, " however, is regularly omitted: Flaccus Claudii, " Flaccus, Claudius' slave." But even when the Family Genitive was used it was rather as a description of a person for purposes of identification than as a *name*: thus Hasdrubal Gisgonis distinguishes the son of Gisgo from Hasdrubal, the son of Hamilcar (*see also* Pliny, Ep. ii., 20). But we, in fact, find such descriptions of married women: as Jucundus Domitiae Bibuli, namely, Jucundus the slave of Domitia the wife of Domitius [? Calpurnius] Bibulus (*see* Cagnat, *Épigraphie latine*, p. 64; Orelli's *Latin Inscriptions*, 2874. During the later Republic the marriage *in manum*, however, became more and more rare, and, of course, in the common case of a formless marriage by consent and cohabitation, the wife did not pass into a husband's family, and so retained her own *nomen* or gentile name, though, as pointed out above, for purposes of description or reputation, she might sometimes use her husband's name. Under the Empire, when the marriage *in manum* had practically ceased to exist, the wife took a fuller name by adding to her *nomen*, or gentile name, the cognomen, or family name, of her father, using feminine endings: thus the daughter of Lucius Aemilius Lepidus Paulus would be called Aemilia Lepida. But sometimes the daughter took the name of both father and mother: thus the daughter of Attius Atticus and Valeria Sextina might be called Valeria Attia.* We have also to remember that from the time of Diocletian (*C.* 290 A.D.) a change of name was by Roman law freely allowed to freemen unless it opened the door to fraud (Cod. Just., Lib. IX., Tit. XXV., *De Mutatione Nominis*).†

Though the doctrine of *manus* (and, therefore, the use of the husband's name by the wife) gradually died out in Rome itself, yet an institution similar to *manus* was a custom also of the Germanic tribes, and when these tribes adopted Roman law they retained their own law of *manus*, and, perhaps, adopted the old Roman law on the subject of family names. Consequently the wife bore the husband's name once more. By this date, however, Christian divorce *a vinculo* was slowly dying out, and the problem before us did not arise in the modern form until the codes of the eighteenth century re-introduced the practice of divorce and re-marriage. But the question throughout the middle ages continually arose in the numerous nullity cases that represented the modification that those ages introduced into the doctrine of indissolubility. In one English nullity case—quoted in *Sir Moyle Finch's* case (Coke's Rep., Part VI., 66*a*)—it is stated that "if a man marries with a woman pre-" contracted, and has issue by her, this issue in law " and truth bears the sirname of his father. But if " after the husband and wife be divorced for the pre-" contract, now the issue have lost his sirname . . . " yet because he once had a lawful sirname, it is a " good ground of reputation subsequent." The same argument applied to the divorced wife. The English mediaeval law indeed adopted, as other Germanic codes adopted, the early Roman law of family life. An Englishwoman passed under the *manus* of her husband and became one with him. Therefore she took his family name. Before dealing with modern English law it will be convenient to consider the practice in some other countries.

In Scotland, the later Roman law seems to have been adopted with the formless marriage, and thus the wife, though she assumes her husband's name and drops her own, and is rightly designated by her Christian name alone, and is referred to as the wife of the individual whose surname is given (*see* Fraser on *Husband and Wife* (2nd ed.), p. 515, and Voet 23.2.40), nevertheless retained and retains for legal purposes her own family name as an alternative to the name of her husband. (See *Dunlop and Greenlees Trustees* [1863], 2 Macp. 1; *Johnstone* v. *Coldstream* [1843], 5 D. 1297, *see* p. 1312.) A will signed by a married woman with her maiden name and surname has been held valid (see *Johnson* v. *Coldstream*). It should be noted that "there is no need of the authority of the court " to enable a man in Scotland to change his name" (Lord President Hope: Young, 1835, 13 S. 262; *see also* Forlong, 1880, 7 R. 910, Lord Pres. Inglis).

It is interesting to see how a different practice arose in France. The Roman practice, at any rate, from the time of Diocletian, as to the use of names generally was the rule that still survives intact in England; as we have seen, a change of name was by Roman law freely allowed to freemen unless it opened the door to fraud (Cod., Lib. IX., Tit. XXV., *De Mutatione Nominis*). This law was adopted in France, but it was found to lead to abuse, and enabled plebeians to enter the order of the nobility. By an ordinance of March 26th, 1555, Henri II. forbad (art. 9) any person to change his name or arms without letters of dispensation under pain of heavy fines and punishment and loss of nobility. The ordinance was not enforced. The States-General, in 1614–15, promoted an ordinance (which was signed in 1629) which directed all gentlemen to sign all legal documents with the name of their families and not of their seigneuries, thus suggesting a reversion to the Roman practice. This was again unenforced, and the order of the nobility was invaded by rich landowning commoners. The decrees of 19th June 1790, and 27th September 1791, abolished titles and ordered every citizen to bear only his family name. State registration of names followed on 20th September 1792, and the changing of names was forbidden on 23rd August 1794. On April 10th, 1803, it was made legal to change a name subject to certain strict formalities, and in the present code this law is maintained. But it has to be noticed that a customary practice had grown up centuries earlier among the nobility by which the family name only was retained by the eldest son, while a younger son added to this name the name of his wife or his mother. Even to-day in some Departments a husband adds the name of his wife to his own name and retains the double name after his wife's death. Consequently, in France, the old Roman practice had been entirely transformed, and we often find a husband bearing the wife's name instead of the wife the husband's name. It was probably for this reason that throughout the nineteenth century no settled practice existed in France after the introduction of the practice of divorce as to the name to be taken by the late wife. It was not until the passing of the law of February 6th, 1893, that it was finally decided that a wife on divorce should resume her family name, and should not be allowed to use the name of her former husband.* The penal code forbids any person to use any name other than his or her

* It may be added that some members of the Italian nobility still derive their names from the name of a family and not, as is more usual in other countries, from the name of an ancient fief: see on the whole question of names the *Encyclopedia Britannica* article by Mr. J. H. Freese, and Larousse, *Grand Dictionnaire Universel de 19 Siecle*, art. "*Nom.*" Riemann and Goelzer in dealing with the inscription referred to above (*Jucundus Domitiae Bibuli*), say, in their *Grammaire Comparée du Grec et du Latin* (p. 112), "de même en Italie on " trouve certains noms de famille en-*i* qui sont des génitifs; " on a dit d'abord Niccolo Niccoli, puis Niccoli s'est " employé tout seul."

† Codex Justinianus, Lib. IX., Tit. XXV. *De Mutatione Nominis, Impp. Diocletianus et Maximianus, A.A. et C.C. Juliano.* Sicut initio nominis cognominis praenominis recognoscendi singulos impositio privatim libera est, ita horum mutatio innocentibus periculosa non est. Mutare itaque nomen sive praenomen sine aliqua fraude licito jure, si liber es, secundum ea quae saepe statuta sunt minime prohiberis, nulli ex hoc praejudicio futuro. *S. XV. K. Jan. A.A. Conss.* (*See* Cod ex Justinianus: P. Krueger, p. 848, and Corpus Juris Civilis, Kriegel, Vol. II., p. 603.)

* *See* on France generally *Dalloz, Jurisprudence Générale: Nom. Prenom.*, also Kelly's French Law of Marriage, 2nd ed., 1895, by O. E. Bodington, p. 130; French Civil Code, annotated by E. Blackwood Wright (ed. 1908), p. 53.

registered name. Thus French law has little in common with English law, which, strictly following the Roman Codex Justinianus, recognises no right in a name *simpliciter*.

When we turn to German law we find a somewhat different position. It will serve no useful purpose to deal at length with the German history of the use of names save to say that the German common law, which offered a permanent background to a great variety of local customs, was a modified form of the Justinian Code as received in 1495. Thus the common law of Germany presumably incorporated the Roman law, permitting non-fraudulent change of name. But this general rule was subject to local customs and local codes: The Bavarian Codex Maximilianus (1756), the Prussian Lanrecht (1794), Code Napoleon (1804), Badische Landrecht (1810), the Austrian Civil Code (1811), and the Saxon Civil Code (1863). It will be sufficient here if reference is made to the provisions of the Civil Code which came into force on January 1st, 1900. This Code (Tit. 1. 12) provides that "where the "right to the use of a name is disputed by another "or against the rightful bearer, or where the interest "of the rightful bearer is injured by another, who "*illegally* uses the same name, the rightful bearer "may demand of the other the discontinuance of the "infringement. If further injuries are to be antici- "pated, he may sue to cause them to be discontinued." Section 1355 provides that "the wife receives the family name of the husband." Section 1577 provides that "the divorced wife retains the family name of the husband." The wife may resume her family name. If she was married previously to the dissolved marriage, she may also resume the name which she had at the time of the marriage, unless she is alone adjudged guilty. The resumption of the name is effected by declaration before the competent authority; the declaration is to be made in publicly authenticated form. If the wife is alone adjudged guilty, the husband may forbid her to bear his name. The prohibition is effected by declaration before the competent authority (magistrate); the declaration is to be made in publicly authenticated form. The magistrate is to communicate the declaration to the wife. With the loss of the name of the husband the wife again receives her family name.

It will also be convenient to recite the provisions of the Swiss Civil Code (10 December 1907) upon the subject. Section 29 declares that there is property in a name. Section 30 allows the Government of a canton to sanction a change of name on good grounds, but this change can be attacked by anyone who is injured by the change. Section 149 provides that a divorced woman takes again the name of the family which she bore before the celebration of the dissolved marriage. If she was a widow at the date of the marriage, she can be authorised by the divorce decree to take her family name again.

In England, apparently from the time of the introduction of surnames, a person could have "divers names at divers times" (Co., Litt. 3*a*), and *Sir Moyle Finch's case* (Coke's Reports, Part VI., 66*a*) shows us that there were from the first at least two types of surnames:—

(*a*) a name inherited from the father;
(*b*) a name acquired by reputation. (*See also Doe d. Luscombe* v. *Yates* (5 B. & A. 543).)

The case of nullity referred to in *Sir Moyle Finch's case* shows also that from mediaeval times, at any rate in England, and almost certainly elsewhere, a wife on marriage acquired her husband's name, possibly by reputation, as in the Roman cases referred to above, but possibly *de jure mariti*. (*See* Findall v. Goldsmith 2 P.D. 263). The issue, on the ground *cognomen majorum est ex sanguine tractum*, also acquired the same name. On the dissolution of the marriage the issue retained the same name by reputation. We are not told whether the wife did so or not. She would, of course, lose the name as "a lawful sirname" (if the name was not merely a name by reputation), as she was no longer in the *manus* of her husband; but the children also lost the name in so far as it was "a lawful sirname," but retained it on the ground of reputation. There seems no reason why this should not have been the case with the quondam wife. The Elizabethan practice shows how invulnerable a claim a wife had to her husband's name: the case of *Bon* v. *Smith* (Cro. Eliz. 532) and *Jobson's case* (Cro. Eliz. 576), which were cases dealing with gifts to persons bearing the testator's name, show that in the Elizabethan age a woman was regarded as having absolutely lost her family birth-name by the fact of marriage. It is true that in the case of *Pyot* v. *Pyot*, in 1749, Lord Chancellor Hardwicke regarded these decisions as "odd," and evaded them, but he did not overrule them. But *Pyot* v. *Pyot* does seem to show that a married woman for the purpose of taking under a deed or devise does not lose her former name. In the case *Wright* v. *Plumptre* (3 B. & A. 474), decided in 1820, it was strongly contended by counsel (Sergeant Pell, Mr. Gaselee, and Mr. Adam) that "the taking of the name "of the husband by the wife is a matter of mere "private arrangement. In many countries married "women retain their maiden names; and even in this "country, women of a certain rank, marrying their "inferiors retain their former names and titles; the "use then of the name of the husband, is a mere "voluntary assumption, and does not take away the "former." Abbott, C.J., however, held that the lady in question "had, as is usual in *England*, parted with "her surname on her marriage, and had been always "called by the name of her husband," and was not "a person of that name" that she bore before marriage. The case of *Leigh* v. *Leigh* (15 Vesey, 92) shows that a married woman stood in a very special position, for in that case Lord Eldon held (p. 100) that "an Act of "Parliament giving a new name does not take away "the former name," and that consequently the former name is available for purposes of succession. It is a voluntary assumption of a name, and this apparently is to be distinguished from the acquisition of a substitutional name on marriage. The cases of *Barlow* v. *Bateman* (3 P. Wms., 65) and *Doe dem. Luscombe* v. *Yates* (5 Barn. & Ald. 544) seem to show that "anyone "may take upon him what surname and as many "surnames as he pleases without an Act of Parlia- "ment." Mr. Jacob Waley, the eminent conveyancer, was of opinion "that a new surname may be assumed at pleasure." (Davidson's Precedents, Vol. III., Part I., 3rd ed., p. 360.) It would, therefore, appear to follow that whether a wife is or is not divested of her late husband's name on divorce, she can at pleasure resume her maiden name or adopt as her own the name that she formerly held either by reputation or *de jure mariti*.

A wife usually takes her husband's surname, but whether it is a name acquired by reputation or by special right, in view of the cases just discussed, is an open question. The question, as we have seen, goes back into classical times.

It is necessary to consider some modern cases on this subject.

Violet, the former wife of Earl Cowley, is an instance of a wife *not* taking her husband's name. The House of Lords held that having "acquired the "right to use a name which the usages of society" allowed her to retain, it was impossible for her first husband to restrain her from using his name (*Earl of Cowley* v. *Countess of Cowley*, A.C. (1901) 460).* Mr. Jacob Waley, as we have seen, held on the cases that "a new surname may be assumed at pleasure provided "of course that it is not for any fraudulent purpose" (*Davis* v. *Lowndes*, 1 Bing. N.C. 618). Lord Lindley (*Earl Cowley* v. *Countess Cowley* (1901) A.C., p. 460) says: "speaking generally, the law of this country "allows any person to assume and use any name, "provided its use is not calculated to deceive and to "inflict pecuniary loss." The test as to the wife's name is probably the question of reputation. In *Findall* v *Goldsmith* (2 P.D. 263), Sir Robert Phillimore said: "I am of opinion that marriage confers a "name upon a woman, which becomes her actual "name, and that she can only obtain another by "reputation. The circumstances must be very excep- "tional to render a marriage celebrated in the actual "names of the parties invalid. It could only be where

* It is desirable to notice that it is not the use of the name that raises the presumption that the wife can pledge the husband's credit. That arises from the fact of cohabitation (*Gomme* v. *Franklin* (1859), 1 F. and F. 465).

" the woman has so far obtained another name by " repute as to obliterate her original name."* Hence, where a woman who had divorced her husband was re-married to him by the name which she had gained at her first marriage, it was held in *Tindall* v. *Goldsmith* that there could be no nullity on the ground of undue publication of banns. A name obtained by repute, it must be remembered, may, however, obliterate an actual name. Thus in the case of *Tooth* v. *Barrow* (1 Spinks. 37. [1854] the illegitimate daughter of a woman, lost her mother's name and acquired by notoriety or repute the name of her mother's husband. This case decided that if under such circumstances banns of marriage were published in the *original name* of the woman with intent to defraud, the marriage would be null and void. Lord Lindley, in the *Cowley case* (p. 459), considered that *Findall* v. *Goldsmith* "goes far to show " that, so far as name is concerned, the Countess was " entitled to continue after the divorce to use the " name and style which she had previously acquired " the right to use," and it was held on her re-marriage to Mr. Biddulph that no damage was done by her continued use of the name Cowley, and that apart from damage she had a right to use a name of which she had acquired the use. The case of *Du Boulay* v. *Du Boulay* (1869, L.R. 2, P.C. 430) carries the right further. Lord Chelmsford said: "In this country we " do not recognise the absolute right of a person to a " particular name to the extent of entitling him to " prevent the assumption of that name by a stranger " . . . . The mere assumption of a name which is " the patronymic of a family by a stranger who has " never before been called by that name, whatever " cause of annoyance it may be to that family, is a " grievance for which our law affords no redress." The assumption of the patronymic name of another family would only be restrained "where it has been " exclusively used in connection with a particular " business (Kerr on Injunctions, 4th ed., p. 544), or " where the unauthorised use of a man's name though " neither libellous or defamatory may cause injury in " his property, business, or profession" (*Hawker* v. *Stourfield Park Hotel Company*, *W.N.* [1900] 51).

There are cases, no doubt, where a mere voluntary assumption of a name would not satisfy the "names and arms" clause in a will (*Croxon* v. *Ferrers* (1904), 1 Ch. 252). The terms of the clause must be observed. Moreover, it is usual, on changing a name, to notify the fact in a public way by royal licence advertised in the London Gazette and other papers, or by deed poll enrolled in the Central Office of the Supreme Court, and advertised in *The Times* and local papers ("Cyclopædia of Forms and Precedents," Vol. 9, p. 1, and Vol. 16, p. 441). But the point of practical importance is that a woman after divorce is free to determine the name by which she wishes to be known. It is possible that by divorce she loses the right to use her late husband's name *de jure mariti*, and, if so, she reverts to her former name. But in any event she can take, on other grounds, the name she bore during marriage, or any other name that appears to her to meet the equities of her position.

J. E. G. DE MONTMORENCY.

* From this it would seem that the name of a married woman is not merely a name acquired by reputation, but is acquired by the fact of marriage, and can be replaced by a name acquired by reputation.

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